

INSTRUCTIONS TO PROPOSERS

Washington State Department of Transportation

I-90/SR 18 I/C to Deep Creek - Interchange Improvements & Widening Project

**ISSUED:
August 2, 2021**

**PROPOSALS DUE:
November 9, 2021**

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1.0 General Information

1.1 Introduction

The Washington State Department of Transportation (WSDOT) will use a two-phase process to select a design-build contractor (“Design-Builder”) to deliver the I-90/SR 18 I/C to Deep Creek-Interchange Improvements and Widening Project (the “Project”) described in the Contract. During the first phase of the procurement, WSDOT determined the short list of Proposers for the Project based on Statements of Qualifications (SOQ) it received in response to its Request for Qualifications (RFQ), dated June 30, 2020. This Request for Proposal (RFP) is issued as part of the second phase of the procurement.

The RFP documents consist of these Instructions to Proposers (ITP); the General Provisions, the Technical Requirements, the Contract Form, which will be conformed to include information based on the successful Proposer’s Proposal, and signed by WSDOT and the Design-Builder; and certain other documents identified in Appendix A of the RFP.

WSDOT invites the SOQ submitters who have been advised that they are on the short list (Proposers) to submit electronic competitive Proposals (Proposals) for design and construction of the Project, as more specifically described in this RFP. WSDOT will award the Contract for the Project (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by WSDOT, and that is determined by WSDOT to provide the best value to WSDOT. The process for determining the Apparent Best Value Proposer includes a review of the pass/fail (P/F) requirements; an assessment of the quality of the Proposer’s Technical Proposal; and the Proposer’s Price Proposal. WSDOT will accept Proposals only from short listed Proposers.

It is the intent of WSDOT to develop a “paperless” Design-Build process in accordance with Executive Order E 1066.00, Executive Order E 1010, and RCW 19.360. Consequently, within all design-build documents, each occurrence of the term “written” shall be deemed to mean an electronic communication (see definition of “written” in Section 1-03.1 of the General Provisions). Additionally, references to “signature” shall be deemed to refer to either electronic signature or Digital Signature, depending on context.

1.2 Definitions

Capitalized terms used in the ITP and not otherwise defined herein, shall have the meanings set forth in the *General Provisions*.

1.3 Scope of Work

The Project description is provided in Section 2.1, *General Information* of the Technical Requirements (TR). The Work includes all services, labor, material, and equipment necessary to design and build the Project in accordance with the Contract.

Proposers are advised that this RFP was developed to organize and consolidate the specifications and design and construction criteria for all Project components. However, the Technical Requirements do not specifically describe every detail of the Work required. It is each Proposer’s responsibility to review all pertinent Project requirements and criteria, as contained in the entire RFP, and the Proposer selected as the Design-Builder must perform its obligations in accordance with the requirements of the entire

RFP, including all mandatory standards. The Design-Builder shall not rely on the physical description contained in the Contract to identify all of the Project components. The Design-Builder shall determine the full scope of the Project through a thorough examination of the RFP, the Project Site, and any reasonable inferences to be gathered from each.

The Design-Builder shall provide a four-lane Diverging Diamond Interchange (DDI) in combination with widening of SR 18 to four lanes from the DDI to approximate Milepost 25.41. The SR 18 roadway widening shall transition from four-lane configuration at the I-90/SR 18 interchange into the existing three-lane configuration just south of the new Deep Creek bridge. Specific features of the Scope of Work include:

- A four-lane DDI configuration at-grade with the SR 18 portion of the I-90/SR 18 interchange and underneath the existing I-90 bridges.
- Modify I-90/SR 18 interchange ramps in conjunction with the four-lane DDI configuration.
- Widen SR 18 to four lanes between the I-90/SR 18 Interchange and just south of Deep Creek where the roadway shall transition to the existing three-lane configuration (westbound truck climbing lane) at approximately MP 25.41.
- Extend the fiber optic lines in the median of I-90 from the vicinity of SE Highpoint Way (MP 19.93) to the new communication HUB in the vicinity of the I-90/SR 18 Interchange as shown in the Conceptual plans.
- Demolish and remove the existing weigh station building in the northwest quadrant of the interchange. This shall include all ancillary infrastructure items including and not limited to foundation, pavement, utilities and meter boxes, signs, bollards, and equipment. Remove the portion of the return loop ramp as shown in the *Conceptual Plans* (Appendix M).
- Intersection improvements at SE 104th Street.
- Stormwater management and design meeting the requirements of the WSDOT *Hydraulic Manual*.
- Stormwater retrofit of existing pavement that meets the requirements of the WSDOT *Highway Runoff Manual*.
- Remove fish barrier structures and improve stream functionality at the I-90/SR 18 interchange by relocating the Lake Creek tributary (hereafter referred to as LC-G) fish bearing stream through a series of open channel structures under the existing I-90 bridges and through two new structures under the I-90 westbound off-ramp and eastbound on-ramp.
- Removal Lake Creek fish barrier structure and construct a bridge at Lake Creek that meets hydraulic opening width requirements stated in TR 2.30 *Water Crossings*.
- Install signal, intelligent transportation system (ITS), illumination, signing, and electrical systems, including construction of advance warning sign systems on the eastbound direction of SR 18 mainline at SE 104th Street. The ITS system shall include a data station and camera facilities that will extend at least as far as the new Deep Creek bridge structure.

- Design and construction of buried power supply conduits and electrical vaults between the existing service meter at SE 104th Street vicinity and Deep Creek to power the needed ITS data station and CCTV camera systems.
- Avoid and minimize impacts to environmentally Sensitive Areas including wetlands, wetland buffers, streams, stream buffers, jurisdictional ditches, and trees.
- Develop and submit permit applications and supporting documentation for all environmental permits.
- Provide adequate mitigation for any impacts to environmentally Sensitive Areas.
- Provide off-site tree replacement.
- Construct chain-up and chain-off areas for SR 18 traffic.
- Construct pedestrian access that provides improved connections through the I-90/SR 18 interchange.
- Design and construction of a four-lane bridge spanning across Deep Creek and the associated highway embankment.
- Remove the existing Deep Creek culvert including the highway embankment and realign and restore stream function for Deep Creek as shown in *Conceptual Plans* (Appendix M).
- Design and construction approximately 1200 linear feet of wildlife exclusion fence north and south of the Deep Creek bridge on both sides of SR 18.
- Design and construct a new two-lane roadway bridge adjacent to the existing structure over Raging River.

1.3.1 Basic Configuration

The Basic Configuration is defined in Section 1-01 of the *General Provisions*. The Proposal must be consistent with the Basic Configuration and the Contract, subject only to such changes as may have been approved by WSDOT in accordance with the Alternative Technical Concepts (ATCs) process described herein.

1.3.2 Conceptual Plans and Reference Documents

The Reference Documents contained in the RFP (including those portions of the Conceptual Design that do not establish the Basic Configuration elements) are provided for informational purposes to assist the Proposers in preparing their Proposals, but the Reference Documents do not represent requirements binding on the Design-Builder. WSDOT makes no representation or warranty as to the accuracy, adequacy, applicability, or completeness of the Reference Documents. Except to the extent set forth to the contrary in the Contract, reliance upon the Reference Documents shall be at the Proposer's risk, and WSDOT shall have no liability or obligation as a result of the inaccuracy, inadequacy, inapplicability, or incompleteness of the Reference Documents, regardless of the contents thereof.

Each Proposer is responsible for reviewing the Conceptual Plans in advance of submitting its Proposal, for purposes of assessing their adequacy for meeting the Contract requirements, and determining whether any changes are necessary or advisable. The Design-Builder shall be solely responsible for Project design and construction in accordance with the Contract.

1.3.3 Utility Relocations

Section 1-07.17 of the *General Provisions* and Section 2.10, *Utilities and Relocation Agreements* of the TR (together with any documents referenced therein) set forth the rights and obligations of WSDOT, the Design-Builder, and any Utility Owner with respect to Relocation and Relocation Costs. Price Proposals shall be consistent with the requirements of Section 1-07.17 of the *General Provisions*. WSDOT funds are not available for Relocation Costs arising out of the Relocation of a Utility for which the Utility Owner has Cost Responsibility. Proposers are required to certify that they have not included in their Price Proposal any such Relocation Costs. Proposers are reminded that the circumstances under which the Design-Builder may obtain additional compensation for Relocation Costs under the Contract are extremely limited.

1.3.4 Project Goals

WSDOT has established the following Project goals:

1) Innovative Design

This goal will be evaluated based on successful experience performing the following activities:

- a. Providing innovative stormwater design and stormwater retrofit of existing pavement.
- b. Developing construction strategies that reduce or eliminate highway lane closures, establish safe work zones, and minimize impacts to motorists during construction.

2) Project Management

This goal will be evaluated based on successful experience performing the following activities:

- a. Establishing strategies to meet Contract Milestones that addresses Project start-up and close-out issues.
- b. Developing and administering Project Quality Management Plan that empowers the Engineer of Record to resolve Nonconforming Work.
- c. Timely and effective communication and collaboration with the public and WSDOT throughout all phases of the project.

3) Environmental Stewardship and Collaboration

- a. Design and construct a project that complies with the permanent injunction regarding culvert correction (United States District Court Western District of Washington at Seattle, United States of America, et al., Plaintiffs, v. State of Washington, et al., Defendants, No. C70-9213 subproceeding No. 01-1, (Culverts), Permanent Injunction Regarding Culvert Correction) and to design the restoration of the stream, riparian areas, and wetlands to maximize benefits to fish, wildlife, and habitat while minimizing environmental impacts.
- b. Gain project support from WSDOT, WDFW, Tribe(s) and other permitting agencies through effective communication and collaboration.
- c. Successfully minimize permanent, temporary, conversion, and indirect impacts to environmentally sensitive areas including wetlands, streams, mature trees, and high-quality habitat.

1.3.5 Validity Period; Notice to Proceed

Proposals shall remain valid for 90 Calendar Days after the Proposal Due Date. WSDOT anticipates that Notice to Proceed (NTP) will be issued shortly after Contract execution, but WSDOT may defer issuance of NTP for up to 30 Calendar Days after Contract execution.

1.3.6 Procurement Schedule

| Action | Date |
|---|-------------------|
| Issue RFP | August 2, 2021 |
| Voluntary Proposer Meeting | August 10, 2021 |
| ATC Submittal Deadline | October 11, 2021 |
| Deadline for Submitting Proposer's Questions | October 11, 2021 |
| Deadline for WSDOT Response to Proposer's Questions | October 25, 2021 |
| Proposals Due | November 9, 2021 |
| Announce Apparent Best Value Proposer | December 29, 2021 |
| Estimated NTP | February 21, 2022 |

1.3.7 Project Cost

This Section is intentionally omitted.

1.3.8 Minority, Small, Veterans, and Women's Business Enterprise Participation

1.3.8.1 General Statement

The participation of Minority, Small, Veteran, and Women Business Enterprises (MSVWBEs) is an important strategic objective for the State. This Contract will include voluntary goals for MSVWBE participation. The Proposer is encouraged to utilize MSVWBEs in accordance with the *General Provisions*, RCW 39.19, and Executive Order 13-01 (issued by the Governor of Washington on May 10, 2013).

No preference will be included in the evaluation of Proposals; no minimum level of MSVWBE participation is required for completion of the Contract; and a Proposal will not be rejected or considered nonresponsive on that basis. While the goals are voluntary, outreach efforts to provide MSVWBEs maximum practicable opportunities are encouraged.

1.3.8.2 Voluntary Minority, Small, Veterans, and Women's Business Enterprise Goals

Goals for voluntary MSVWBE participation have been established as a percentage of the Design-Builder's Total Proposal Price. WSDOT has established the following voluntary goals:

- Minority 10 percent
- Small 5 percent
- Veteran 5 percent
- Women 6 percent

For MSVWBE requirements, refer to Section 1-07.11 of the *General Provisions*.

1.3.9 Disadvantaged Business Enterprise Participation Requirements

This Section is intentionally omitted.

2.0 Procurement Process

2.1 Confidentiality and Conflicts of Interest

2.1.1 Organizational Conflicts of Interest

Organizational conflicts of interest means that because of other activities or relationships with other persons or entities, a Person or entity:

- Is unable or potentially unable to render impartial assistance or advice to WSDOT
- Is or might be otherwise impaired in its objectivity in performing the Contract Work
- Has an unfair competitive advantage

The integrated nature of the design-build project delivery method creates the potential for organizational conflicts of interest. Disclosure, evaluation, neutralization, and mitigation of these conflicts and of the appearance of conflicts, is in the interests of the public, WSDOT, and the consulting and construction communities.

WSDOT will take steps to ensure that individuals involved in the preparation of the procurement package, evaluation of each SOQ and Proposal, and Design-Builder selection are not influenced by organizational conflicts of interest, and that no Proposer is given an unfair competitive advantage over another.

Attention is directed to the requirement for disclosure of organizational conflicts of interest set forth in 23 CFR Section 636.116(a)(2), WSDOT Secretary's Executive Order E 1059.00, and WSDOT *Organizational Conflicts of Interest Manual*.

As stated in the WSDOT *Organizational Conflicts of Interest Manual*, it is the Proposer's responsibility to avoid, neutralize, or mitigate potential conflicts of interest. Proposers are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an organizational conflicts of interest. Proposers shall state how their interests, activities, or relationships, or those of the chief executives, directors, Key Personnel, or any proposed consultant, Subconsultant at any tier, contractor, or Subcontractor at any tier may result in, or could be viewed as, organizational conflicts of interest prior to or in the Proposal, in accordance with WSDOT Secretary's Executive Order E 1059.00 and the WSDOT *Organizational Conflicts of Interest Manual*. Submit Form R, *Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan* and Form S, *Organizational Conflicts of Interest Certification*.

If organizational conflicts of interest are determined to exist, WSDOT may, at its sole discretion, offer the Proposer the opportunity to avoid, neutralize, or mitigate the organizational conflicts of interest; disqualify the Proposer from further participation in the procurement; cancel this procurement; or, if award has already occurred, declare the Proposal nonresponsive and award the Contract to the next responsive Apparent Best Value Proposer, or cancel the Contract. If the Proposer was aware of an organizational conflicts of interest prior to award of a Contract and did not disclose the conflict to WSDOT, WSDOT may terminate the Contract for default.

WSDOT has retained the following consulting firms to provide guidance in preparing this ITP, the RFP, and advice on related financial, contractual, and technical matters:

- Jacobs Engineering Group,
- Burgess and Niple, Inc.,
- Environmental Sciences Associates,
- Osborn Consulting Inc.,
- Parametrix, Inc.,
- PRR, Inc.,
- Bolima Drafting & Design, Inc.,
- Jill Marie Irwin dba Irwin Writing / Editing,
- Michael Minor and Associates, Inc.,
- Golder Associates and Krebs Corporation to perform Cost Estimate Validation Process (CEVP) for this Project.

These firms are prohibited from joining any Proposer's team or otherwise assisting any Proposers in connection with the Contracting process.

2.1.2 Confidentiality During Evaluation and Selection Process

Subject to Applicable Law, WSDOT will use reasonable efforts to maintain confidentiality during the Proposal process. The foregoing shall not preclude WSDOT from using, in its sole discretion, ideas contained in the Proposals of any unsuccessful Proposer, subject to WSDOT's payment of the stipend in accordance with Section 7 of this ITP.

2.2 Examination of Request for Proposal

Each Proposer shall be solely responsible for reviewing and examining, with appropriate care, all documents included in the RFP, including any supplements, addenda, and clarification notices issued by WSDOT; requesting an explanation or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer fails to understand; and investigating and informing itself of any and all Project conditions and circumstances that may in any way affect the contents of the Proposal or the performance of the Work after Contract award. The Proposer bears the risk of all consequences of any failure to thoroughly investigate all relevant Project and Project Site conditions and circumstances as described herein.

2.3 Communications

The WSDOT Technical Point of Contact for receiving Proposer questions, ATC submittals, and all other communications about the Project and the RFP (other than submission of the Proposals) is as follows:

Mark Allison, PE
Connecting Washington - Design Project Engineer
15700 Dayton Ave. N
Seattle, WA 98133

ALLISOM@wsdot.wa.gov

Phone: 206-440-4578

Except for communications expressly permitted by the RFP, the Proposer shall not discuss the RFP with other WSDOT staff members or WSDOT consultants involved with the Project before Contract execution or cancellation of the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of WSDOT.

Proposals shall be submitted to Jenna Ball in accordance with Section 3 of this ITP.

2.4 Submission of Proposer Questions

Any Proposer questions regarding a perceived discrepancy, deficiency, ambiguity, error, or omission contained in the RFP documents, or of any provision that the Proposer otherwise fails to understand regarding the RFP documents or the Project, must be submitted by email to the WSDOT Technical Point of Contact by the deadline for questions set forth in Section 1 of this ITP. Requests for clarification or interpretation must specifically reference the Sections and the page numbers of the RFP documents, unless such request is of a general application. Telephone requests will be accepted provided that the requests are followed by an email to the WSDOT Technical Point of Contact at the address specified in Section 2.3 of this ITP. WSDOT will provide responses to questions as described in Section 2.5 of this ITP.

2.5 RFP Addenda and Responses to Questions

WSDOT may issue addenda to the RFP. WSDOT will provide responses to all questions received in accordance with this Section. All addenda and responses will be posted on the WSDOT Contract Ad & Award website at: <http://www.wsdot.wa.gov/biz/contaa/Contracts/I-90SR18Interchange.html>

WSDOT will send an email notification to the interested parties list as soon as each addendum, response or group of responses is issued. Notwithstanding the foregoing, WSDOT will communicate with each Proposer on a one-on-one basis with regard to questions regarding ATCs that WSDOT determines are appropriate for confidential communications.

A final set of questions and answers will be compiled and distributed prior to the Proposal Due Date. Responses to questions are not considered part of the Contract, and shall not be relevant in interpreting the Contract, except as they may clarify provisions otherwise considered ambiguous.

If WSDOT determines, in its sole discretion, that any interpretation or clarification resulting from the question and answer process requires a change in the RFP documents, WSDOT will issue an addendum making such change. WSDOT will not be bound by, and the Proposer shall not rely on, any communication or representation regarding the RFP documents, unless it is an addendum to this RFP and is not superseded by a later addendum to this RFP, and except to the extent provided above regarding responses to questions.

2.6 Right of Way Access

Prior to award of the Contract, if the Proposer determines that field investigations are necessary to properly bid the Work, the Proposer shall request Right of Way (ROW) access from the WSDOT Engineer prior to performing any field investigations. The Proposer shall obtain an *Application for General Permit* (Appendix R of the RFP) and other approvals as necessary based on proposed field investigation activities from WSDOT. Applicable forms

shall be submitted to the WSDOT Engineer for approval seven Calendar Days in advance of the requested field investigation date.

The Proposer shall coordinate with the WSDOT Engineer to determine if traffic control is necessary. When traffic control is necessary, proposed Maintenance of Traffic Plans shall be submitted for approval a minimum of seven Calendar Days in advance, and include the hours and Calendar Days the Proposer will be in WSDOT's ROW. As guidance, Section 2.22, *Maintenance of Traffic* of the TR provides the allowable Contract Work hours and lane closure times.

The Proposer shall coordinate with the WSDOT Engineer to access the property owned by WSDOT available for use as a Project office.

2.7 Geotechnical Information

2.7.1 Geotechnical Baseline Report

WSDOT has prepared a *Geotechnical Baseline Report* (GBR) in Appendix G of the RFP. Each Proposer is solely responsible for reviewing the GBR and incorporating the baselines into their Proposal. The GBR shall not be used for design.

2.7.2 Geotechnical Data Report

WSDOT has prepared a *Geotechnical Data Report* (GDR) in Appendix G of the RFP. Each Proposer is solely responsible for reviewing, analyzing, and forming their own conclusions about the Project subsurface and geotechnical conditions using the data presented in the GDR. Each Proposer is solely responsible to draw conclusions from the GDR about how the geotechnical materials will impact the Work.

Post-award, the data in the GDR may not be sufficient for design. Each Proposer is responsible to augment the data in the GDR, as necessary, to meet the requirements of the RFP and Mandatory Standards to complete the Work.

To the extent not consumed by testing, soil samples and rock cores obtained to develop the GDR are available for viewing at the WSDOT State Materials Laboratory Geotechnical Office, 1655 South Second Avenue, Tumwater, Washington, 98512. Soil samples and rock core from the GDR will be turned over to the Design-Builder after the Contract is awarded and upon the request of the Design-Builder. The Design-Builder has 90 Calendar Days to request the samples. After 90 Calendar Days, WSDOT will dispose of the samples.

2.7.3 Additional Geotechnical Investigation and Analysis

Prior to award of the Contract, if the Proposer determines that additional geotechnical or subsurface investigations are necessary to properly bid the Work, it is the responsibility of the Proposer to perform such investigation and analysis at its sole expense. Prior to performing any field investigations, the Proposer shall obtain ROW access approval as detailed in Section 2.6 of this ITP from WSDOT. Such requests for investigations may take place at any time before or after submission of the Proposal. All subsurface investigations, including sampling and laboratory testing, shall be performed in accordance with the WSDOT *Geotechnical Design Manual* (Appendix D), the 1988 *AASHTO Manual on Subsurface Investigations*, AASHTO standards, and ASTM standards. No such investigations shall be performed without the prior written consent of WSDOT, which consent may be granted or denied at WSDOT sole discretion.

2.8 *Alternative Technical Concepts*

To promote innovation by Proposers and to maintain flexibility in the procurement process, WSDOT will allow Proposers to submit to WSDOT for consideration ATCs that modify the Basic Configuration or other Contract requirements. In order to be approved, an ATC must be deemed, in WSDOT's sole discretion, to provide a Project that is "equal or better" on an overall basis than the Project would be without the proposed ATC. Concepts that simply delete scope, lower performance requirements, lower standards, or reduce Contract requirements are not acceptable as ATCs.

2.8.1 **Pre-Proposal Submittal of Alternative Technical Concepts**

To be considered, a proposed ATC must be submitted to WSDOT no later than 11:00:59 a.m. Pacific Time (PT) on the date set forth in Section 1.3 of this ITP. This deadline also applies to revised submissions in response to WSDOT's comments. Each ATC submittal package shall be submitted via email in a single PDF file, shall include line numbers on all narrative pages, and shall address all of the following elements:

- Brief Description: A few words identifying the ATC, for future reference.
- Detailed description: A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information including, if appropriate, product details, and specifications.
- Usage: A description of where and how the ATC would be used on the Project.
- Subsurface Investigation: Present a geotechnical investigation related to the ATC including all supporting documentation. Said investigation shall include the Proposer's geotechnical basis of design.
- Proposed RFP modifications: References to all requirements of the RFP that are modified by the proposed ATC with an explanation of the nature of the modification from said requirements and a request for approval of such modifications. Use addendum and tracked changes format.
- Design Analyses: If the ATC requires "Design Analysis" as defined in the WSDOT *Design Manual* (Appendix D), the submittal package shall include documentation for the design analysis which conforms to the WSDOT *Design Manual* (Appendix D). No design analysis shall be incorporated into an ATC without receiving WSDOT approval, and Federal Highway Administration approval as applicable.
- Analysis: An analysis justifying use of the ATC and demonstrating how the Project with the ATC is "equal or better" than the Project without the ATC. The "equal or better" analysis shall address the following:
 - a) Functionality, which when appropriate shall require a traffic operational analysis
 - b) Structural adequacy
 - c) Safety
 - d) Comparison of life cycle costs including repair and maintenance
 - e) Aesthetics
 - f) Impacts on construction traffic
 - g) Effect on or changes to environmental commitments identified in the RFP

- h) Impacts to surrounding and adjacent communities, including EJ and LEP populations
- i) Changes needed in the location, length, height, or number of noise walls
- j) Impact on Utilities and rail
- k) Discussion of additional ROW or easements required

Do not submit any data indicating the effect that approval of the ATC will have on the Proposal Price.

If a Proposer wishes to make any announcement or disclosure to third-parties (such as other governmental agencies that may have an interest in the ATC) concerning any ATC, it must first notify WSDOT of its intent to take such action, including details as to date and participants, and obtain WSDOT's prior approval to do so.

2.8.2 Pre-Proposal Review of Alternative Technical Concepts

Incomplete ATC submittal packages may be returned by WSDOT without review or comment. WSDOT may, at its discretion, request additional information regarding a proposed ATC, conduct One-on-One Meetings with Proposers to discuss ATCs, and establish such protocols or procedures as it deems appropriate for conducting One-on-One Meetings. Subject to the Washington Public Records Act, and to WSDOT's right to use proposed concepts following award of the Contract based on payment of the stipend, all discussions with Proposers regarding ATCs will remain confidential.

Although WSDOT reserves the right in its sole discretion to reject any ATC, ATCs specifically not eligible for approval, include the following:

- ATCs that are, in WSDOT's sole discretion, deemed not to provide a Project that is "equal or better" on an overall basis than the Project would be without the ATC.
- Any ATC that would require excessive time or cost for WSDOT to review, evaluate, or investigate.

In order to be approved, an ATC must be deemed, in WSDOT's sole discretion, to provide a Project that is "equal or better" on an overall basis than the Project would be without the proposed ATC. Potential changes to the Proposal Price will not be considered by WSDOT in the "equal or better" determination.

2.8.3 WSDOT Response

WSDOT will respond to all ATCs within 14 Calendar Days of ATC receipt, provided that WSDOT has received all requested information regarding the ATC. The format for response will include the ATC number, brief description, and shall be limited to one of the following:

1. The ATC is approved.
2. The ATC is not approved.
3. The ATC is not approved in its present form, but may be reconsidered for approval upon satisfaction, in WSDOT's sole discretion, of certain identified conditions that must be met or certain clarifications or modifications that must be made as described hereunder. The Proposer shall not have the right to incorporate this ATC into the Proposal unless and until the ATC has been resubmitted within the time limits in the

ITP, with the conditions stated below satisfied, and WSDOT has unconditionally approved the revised ATC.

4. The submittal does not qualify as an ATC but appears eligible to be included in the Proposal without an ATC (i.e., the concept appears to conform to the Basic Configuration and to be consistent with other Contract requirements).

WSDOT approval of an ATC extends solely to the information contained in the ATC submittal.

2.8.4 Incorporation into Proposal

The Proposer may include any or all approved ATCs in its Proposal. The Proposal Price shall reflect any incorporated ATCs. Except for incorporating approved ATCs, the Proposal shall not otherwise contain exceptions to or variations from the requirements of the RFP. If WSDOT responded to an ATC by stating that certain conditions must be met prior to granting approval, the Proposer shall not have the right to incorporate the ATC into the Proposal unless and until the ATC has been timely resubmitted with the conditions satisfied and WSDOT has approved the ATC in writing. Once an ATC has been approved, only the entire ATC is eligible for inclusion into the Proposal. The inclusion of partial ATCs into a Proposal is not allowed.

WSDOT's geotechnical investigation and subsurface Utilities investigation conducted for this Project and included in the RFP was based on the Conceptual Design and Basic Configuration. Therefore, the geotechnical information and subsurface Utilities Information provided in the RFP does not purport to represent Site conditions for an ATC.

Consequently, with respect to geotechnical investigations, the Proposer is responsible for conducting its own geotechnical investigation prior to the Proposal Due Date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of an ATC. When conducting the geotechnical investigation, Design-Builder may take into consideration the geotechnical information provided in the RFP to supplement its own analysis as applied to the Design-Builder's design addressed in the ATC. The Proposer's geotechnical investigation included in the ATC submittal, once accepted by WSDOT, will form the basis upon which Differing Site Conditions will be addressed under the Contract for Work implemented as part of an ATC.

With respect subsurface Utilities, WSDOT has performed preliminary investigations of existing Utilities located within the Project's ROW as designated in the RFP absent modification by an ATC. The Proposer will be responsible for conducting its own investigation relating to all Utilities located outside of said ROW.

The Design-Builder shall conduct all Work necessary to update the basis of design and the Alternative Comparison Table for the Project should any revisions be necessary due to an ATC.

2.9 Change in Proposer's Organization

If a Proposer wishes to change its form of organization from that described in its SOQ, or if it wishes to remove any Major Participant or Key Personnel (as such terms are defined in the RFQ) from those identified in the SOQ, the Proposer shall obtain written approval of the change from the WSDOT Technical Point of Contact as specified in this Section prior to submitting its Proposal. To qualify for WSDOT's approval, the written request must demonstrate how the proposed change will be equal to or better than the Major Participant or Key Personnel

identified in the SOQ. The written request shall include a resume (limit to two pages per Person) for each Major Participant or Key Personnel and a side-by-side comparison of the original Major Participant or Key Personnel (as identified in the SOQ) and the proposed Major Participant or Key Personnel. For Major Participants, this side-by-side comparison shall relate relevant experience to each of the evaluation criteria identified in Section 7.6.2 of the RFQ. For Key Personnel, this side-by-side comparison shall relate relevant experience to the Project goals identified in Section 7.5.3 of the RFQ. Side-by-side comparisons shall demonstrate that the proposed change is equal or better. WSDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion.

2.9.1 Liquidated Damages for Key Personnel

Key Personnel Damages – If awarded the Contract, the Proposer shall make all Key Personnel identified in the SOQ available at all times and places required under the terms of the Contract, and shall ensure that such Key Personnel devote all efforts necessary for all periods of time necessary or required under the terms of the Contract, to timely fulfill all Contract obligations.

If an individual filling one or more Key Personnel roles is not available for the Work, or does not maintain active involvement in the prosecution and performance of the Work, the Proposer acknowledges that WSDOT, the Work, and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to determine the actual damages that would accrue in such an event. Therefore, if for any reason a substitution of Key Personnel identified in the SOQ is either requested by the Proposer or replacement is required by WSDOT, the Proposer agrees to pay liquidated damages in the amount identified below, per substitution, in addition to obtaining the required approval of the substituted Key Personnel from WSDOT. The Proposer understands and agrees that any damages payable in accordance with this section are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances.

| Key Personnel | Liquidated Damage Amount |
|----------------------------------|--------------------------|
| Project Manager | \$250,000 |
| Design Manager | \$150,000 |
| Construction Manager | \$150,000 |
| Environmental Compliance Manager | \$150,000 |
| Inclusion Manager | \$50,000 |

2.10 Withdrawal of Proposal

After submitting a Proposal to WSDOT, the Proposer may withdraw it if:

- The Proposer submits a written request signed by an authorized representative of the Proposer.

The original Proposal may be revised and resubmitted as the official Proposal if WSDOT receives the revised Proposal before the Proposal Due Date.

Any attempt by a Proposer to withdraw its Proposal after the time due on the Proposal Due Date, regardless of whether WSDOT requests a Best and Final Offer (BAFO), will result in a draw by WSDOT upon the Proposal bond.

2.11 WSDOT's Rights

WSDOT reserves the right, at its sole discretion, to:

- Appoint evaluation committees to review Proposals.
- Investigate the qualifications of any Proposer.
- Seek or obtain data from any source related to the Proposals.
- Require confirmation of information furnished by a Proposer.
- Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the responses to this RFP.
- Require additional information from a Proposer concerning its Proposal.
- Seek and receive clarifications to a Proposal.
- Require additional evidence of qualifications to perform the Work.
- Modify the RFP process.
- Waive minor deficiencies and irregularities in a Proposal.
- Reject any or all of the Proposals.
- Cancel, modify, or withdraw the RFP.
- Issue a new RFP.
- Issue a request for BAFOs.
- Cancel a Contract signed by the Apparent Best Value Proposer, but not yet executed by WSDOT.
- Not issue NTP after execution of the Contract.

The RFP does not commit WSDOT to enter into a Contract or proceed with the procurement described herein. Other than the right to receive a stipend as described in Section 7 of this ITP, no unsuccessful Proposer shall be entitled to reimbursement of its costs in connection with the RFP.

2.12 Announce Apparent Best Value Proposer

The public opening of the sealed Price Proposal and announcement of Apparent Best Value Proposer is scheduled for 11:00:59 a.m. PT on the date set forth in Section 1.3 of this ITP. Contract Ad & Award will livestream the virtual public opening using this link:
<https://www.wsdot.wa.gov/biz/contaa/Contracts/default.htm>

2.13 Award of Contract

Typically, Contract Award or Proposal rejection will occur within 60 Calendar Days after the Proposal Due Date. If the Apparent Best Value Proposer and WSDOT agree, this deadline may be extended. If they cannot agree on an extension by the deadline, WSDOT reserves the right to award the Contract to the next Apparent Best Value Proposer or reject all Proposals. WSDOT will notify the successful Proposer of the Contract award in writing.

2.14 Bonds

2.14.1 Proposal Bond

Each Proposer shall submit a Proposal bond with its Proposal in the amount of 5 percent of the Proposal Price, issued by a Surety meeting the requirements stated in this Section. The Proposal bond shall be in an electronic format via Surety2000.com or Insurevision.com. The Proposal bond shall be submitted electronically via Trns·Port Expedite® software and BidExpress®. A Proposal bond shall not be conditioned in any way to modify the minimum 5 percent required. Proposals that fail to include a Proposal bond in compliance with this Section shall be deemed nonresponsive and will be rejected by WSDOT.

2.14.2 Contract Bond

The successful Proposer shall provide an executed Contract Bond for the full Proposal amount. This Contract Bond shall:

1. Be on WSDOT Form 272-002B, *Contract Bond – Highway Construction*, provided in Appendix F of the RFP.
2. Be signed by an approved Surety (or Sureties) that:
 - a. Is registered with the Washington State Insurance Commissioner
 - b. Appears on the current Authorized Insurance List in the State published by the Office of the Insurance Commissioner
3. Be conditioned upon the faithful performance of the Contract by the Design-Builder within the prescribed time
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the Project under titles 50, 51, and 82 RCW
5. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure:
 - a. Of the Design-Builder (or any of the employees, Subcontractors, or lower tier Subcontractors of the Design-Builder) to faithfully perform the Contract
 - b. Of the Design-Builder (or the Subcontractors or lower tier Subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier Subcontractors, material person, or any other person who provides supplies or provisions for carrying out the Work

WSDOT may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Design-Builder to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

The Contract Bond is intended to provide protection to WSDOT for the Design-Builder's obligations with respect to the construction and post-construction phases of the Project, and to meet the requirements of RCW 39.08, et al.

2.14.3 Surety Qualifications

Bonds must be issued by a Surety with a Best's rating of at least "A-" or better and Financial Size Category of VIII or better by A.M. Best Co. The Surety shall be registered with the

Washington State Insurance Commissioner, and shall appear on the current Authorized Insurance List in the State published by the Office of the Insurance Commissioner.

2.15 Execution of Contract

Within 20 Calendar Days after award of the Contract, the successful Proposer shall return the signed Contract prepared by WSDOT, together with the insurance certification, Contract Bond, and any other pre-award information required by the Contract and shall be registered as a contractor in the State.

Until WSDOT executes a Contract, no Proposal shall bind WSDOT. No Work shall begin within the Project limits or within Sites furnished by WSDOT until issuance of NTP. The Design-Builder shall bear all risks for any Work begun outside such areas and for any materials ordered before the Contract is executed by WSDOT and NTP has been issued.

If the Proposer experiences circumstances beyond its control that prevents execution of the Contract within 20 Calendar Days after receipt of documents, WSDOT may, at its discretion, grant up to a maximum of 20 additional Calendar Days for return of the executed Contract, provided WSDOT deems the circumstances warrant it.

2.16 Failure to Execute Contract

Failure to return the insurance certification, Contract Bond, or other pre-award information required by the Contract with the signed Contract, or failure or refusal to sign the Contract or failure to register as a contractor in the State, shall result in a call upon the Proposal bond. If this should occur, WSDOT may then award the Contract to the second Apparent Best Value Proposer or reject all remaining Proposals. If the second Apparent Best Value Proposer fails to return the required documents as stated above within the time provided after award of the Contract, the Contract may then be awarded successively in a like manner to the remaining Apparent Best Value Proposers until the above requirements are met or the remaining Proposals are rejected.

2.17 Return of Proposal Bond

When Proposals have been examined and corrected as necessary, Proposal bonds accompanying Proposals ineligible for further consideration will be returned. All other Proposal bonds will be held until the Contract has been properly executed. When the Contract has been properly executed, all remaining Proposal bonds, except those subject to forfeiture, will be returned.

3.0 Proposal Delivery, Content, Format, and WSDOT Secure File Transfer Protocol

3.1 Submittal Requirements

3.1.1 Due Date, Time, and Electronic Location

Technical Proposals must be electronically uploaded to the WSDOT Secure File Transfer Protocol (SFTP) site for this Project prior to 11:59:59 p.m. (Midnight) PT, on the Proposal Due Date set forth in Section 1 of this ITP.

Example instructions on how to upload the Technical Proposal to the WSDOT SFTP site using the free FTP client FileZilla can be found in the online directory for the Project in the folder named "Submittals".

Proposers shall use the same Username and Password that was provided by WSDOT Contract Ad & Award office during the RFQ to access the WSDOT SFTP site. WSDOT will grant permission to the WSDOT SFTP a minimum of 21 Calendar Days before the Proposal Due Date set forth in Section 1 of this ITP.

Only the final version of the Technical Proposal shall be upload to the WSDOT SFTP site. If revisions to the uploaded final Technical Proposal are necessary before the Proposal Due Date, Proposers shall completely replace the Technical Proposal on the WSDOT SFTP with the revised Technical Proposal. Only a single version of the Technical Proposal shall be on the WSDOT SFTP at the Proposal Due Date. If multiple versions of a Technical Proposal are on the WSDOT SFTP site after the Proposal Due Date, it may result in a nonresponsive Proposal.

WSDOT is not responsible for any technical difficulties or network issues Proposers may encounter in accessing the WSDOT SFTP site. WSDOT recommends testing the WSDOT SFTP site and upload process prior to the Proposal Due Date.

The Price Proposal and Proposal bond shall be submitted electronically via Trns·Port Expedite® software and BidExpress® for this Project prior to 11:59:59 p.m. (Midnight) PT, on the Proposal Due Date set forth in Section 1.3 of this ITP. WSDOT will not accept Proposals by facsimile, email, or hard copy. Any Proposal that fails to meet the deadline or delivery requirement may be rejected and returned to the Proposer without having been opened, considered, or evaluated.

3.1.2 Contents of the Proposal

The Proposal shall contain the sections listed below, and shall respond fully to all applicable requirements of the RFP:

Table 3.1.2 CONTENTS OF THE PROPOSAL

| TECHNICAL PROPOSAL SECTIONS 1-5 AND APPENDICES | Page Limit |
|--|------------|
| Section 1 – Executive Summary | 2 |
| Section 2 – Innovative Design | 10 |
| Section 3 – Project Management | 10 |
| Section 4 – Environmental Stewardship and Collaboration | 8 |
| Section 5 – MSVWBE Participation Plan | 6 |
| Appendix A – Proposer Information and Certifications | None |
| Form A (<i>Design-Build Proposal Form and Signature Page</i>) | |
| Form C (<i>Upset Amount Determination</i>) | |
| Form D (<i>Contract Time/Milestone Completion Deadlines</i>) | |
| Form E (<i>Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor Performing 20 Percent or More of the Design-Build Work</i>) | |
| Description of Legal Structure | |
| Joint and Several Liability Letter, (if applicable) | |

| TECHNICAL PROPOSAL SECTIONS 1-5 AND APPENDICES | Page Limit |
|--|--------------------|
| Form G (<i>Non-Collusion Declaration</i>) | |
| Form H (<i>Certification for Federal-Aid Contracts</i>) (This Form is intentionally omitted) | |
| Form K (<i>Form of Guaranty</i>) | |
| Form L (<i>Utility Certification</i>) | |
| Evidence of Authorization - Powers of Attorney | |
| Information and Work Site Certification | |
| Certification Regarding Changes to Key Personnel and Major Participants | |
| Certification Regarding Right of Way | |
| Form M (<i>Stipend Agreement</i>) | |
| Form N (<i>Stipend Invoice</i>) | |
| Form O (<i>Subcontractor List</i>) | |
| Form Q (<i>Option for Use of WSDOT-Owned Property</i>) | |
| Form R (<i>Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan</i>) | |
| Form S (<i>Organizational Conflicts of Interest Certification</i>) | |
| Appendix B – Resumes | 2 Pages per Person |
| Appendix C – Details of Technical Approach and Innovations | None |

The page limits listed here are specific to the narratives and organizational charts. There is no page limit for the Preliminary Baseline Contract Schedule, plans, or other technical data provided in each section.

1

| PRICE PROPOSAL SECTION -6 | Page Limit |
|-------------------------------------|------------|
| Section 6 - Price Proposal | None |
| Schedule of Items (via BidExpress®) | |
| Proposal Bond (via BidExpress®) | |

2 3.1.3 Proposal Format

3 All information in the Technical Proposal shall be formatted as a PDF and shall conform to
4 the requirements of 3.1.4. Any other materials shall be presented with a readable format. The
5 organization chart must be readable.

6 3.1.3.1 Appendices

7 Resumes, if provided for Project personnel other than Key Personnel, shall be included in
8 Appendix B. Resumes shall be limited to two pages per Person.

9 A complete copy of each ATC, if provided, shall be included in Appendix C of the Proposal.

Additional appendices may be used for clarification, illustrative purposes, or both. Appendices would typically consist of plan sheets or other illustrative information and shall not include narrative text except as specifically required by this ITP. The need or use of additional appendices is at the discretion of the Proposer and may, or may not, be used by WSDOT in the evaluation of the Proposal.

3.1.4 Page Limits, Copies, and Submission Instructions

The Technical Proposal shall be formatted as follows:

- **Language** - All information shall be in English.
- **File Type** – Technical Proposals shall be submitted as a PDF. All PDF files shall be flattened; PDF files shall be unlocked; embedded video, audio, or multimedia shall not be used.
- **File Size** – Individual file sizes shall not exceed 200MB; files shall not be zipped.
- **Font** – Font shall be a regular style font.
- **Font Size** – Font size shall be a minimum of 12 points.
- **Spacing** - All text shall be single-spaced.
- **Style** – Other than minimum font size and a regular style font, heading styles and figures are not prescribed.
- **Page Size** - Except for charts, exhibits, and other illustrative and graphical information, all information shall be on 8.5 by 11-inch portrait-oriented pages. Charts, exhibits, and other illustrative and graphical information may be on 11 by 17-inch pages. Text on 11 by 17-inch pages shall be limited to contextual information relating to charts, exhibits, and other illustrative and graphical information. Examples of contextual information include titles, labels, legends, and concise descriptive captions. The 11 by 17-inch pages, if any, will be counted as one page.
- **Page Margins** - Page margins shall be a minimum of 0.75 inches from any page edge. No text, tables, figures, photos, or other substantive content shall extend into the margin minimum.
- **Page Limit** - Page limits are described in Table 3.1.2. The Proposals shall include only information required by this RFP. No other information will be considered in the evaluation of the Proposal. All pages that exceed the specified page limit will be deleted prior to evaluation.
- **Hyperlinks** - Hyperlinks to material outside the Proposal shall not be used. Any links to other information will be ignored and not be considered in the evaluation of the Proposal.
- **Dividers** - Section dividers will not be counted toward the allowable page total and shall contain, at a minimum, one of the following:
 - a) Section number
 - b) Section title
 - c) No other text is permitted on the dividers.
- **Front Cover** - The front cover will not be counted towards the page limit and shall be labeled with the name of the Proposer, along with the following:

I-90/SR 18 I/C to Deep Creek – Interchange Improvements and Widening
Project
Design-Build Project
Proposal
[Date of Submittal]

Package (s) - The Technical Proposal shall be uploaded to the WSDOT SFTP site and shall clearly display the Proposer's name

The Proposal shall consist of the following two divisions:

1. Technical Proposal Sections 1-5:

The Technical Proposal shall be uploaded to the WSDOT SFTP site as described in Table 3.1.2 of this ITP.

Each Proposer must provide the following:

- An original Proposal with signatures.

2. Price Proposal Section 6:

The Price Proposal shall be submitted electronically via Trns-Port Expedite® software and BidExpress® with an electronic Proposal bond via Surety2000.com or Insurevision.com and BidExpress® as described in Table 3.1.2 of this ITP.

The Price Proposal consists of:

1. Schedule of Items
2. Proposal Bond

(See Section 3.1.1 of this ITP for Proposal delivery).

3.2 Disqualification

The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal that result from such inadvertent opening, if WSDOT determines that the Proposer did not follow the instructions in this ITP. It is the Proposer's sole responsibility to ensure that its Proposal is submitted as required. Proposals submitted after the Proposal Due Date will be rejected without consideration or evaluation. Proposers shall provide responses to all information requested in the RFP. Failure to respond or to provide requested information may result in a determination by WSDOT, in its sole discretion, that a Proposal is nonresponsive.

3.3 Technical Proposal

3.3.1 General

The Technical Proposal shall include concise narrative descriptions and graphic illustrations, drawings, charts, technical reports, and calculations that will enable WSDOT to clearly understand and evaluate both the capabilities of the Proposer and the characteristics and benefits of the proposed Work. No price information of any kind may be included in the Technical Proposal. A complete copy of all approved ATCs incorporated into the Proposal, including WSDOT's approval letters issued pursuant to Section 2.8 of this ITP, shall be included in Appendix C of the Proposal.

Plans or drawings submitted as a part of the Technical Proposal shall be submitted in accordance with the requirements of the RFP. The Technical Proposal must be organized to

correspond to the items listed in this Section and address the evaluation factors set forth in this Section and in Section 4.2 of this ITP. The Proposer shall use tabbed dividers to separate the contents of the Technical Proposal.

3.3.2 Executive Summary (Section 1)

Submit an executive summary, written in a Plain Language that contains sufficient information to familiarize reviewers with the Proposer's Project approach and ability to satisfy the Project goals; and the financial, legal, and TR of the Project. The executive summary shall summarize each of the sections required in this ITP. The intent is to familiarize reviewers who will not be reading each individual section of the Proposal.

3.3.3 Goal 1: Innovative Design (Section 2)

A description of this Project goal is provided in Section 1.3.4.

WSDOT seeks a Design-Builder that will finalize the design of the Project to provide an innovative stormwater management and stormwater retrofit design for the interchange improvement and the roadway widening to maximize the stormwater retrofit flow control and treatment of existing pavement in accordance with the Puget Sound Basin retrofit obligations in Highway Runoff Manual (Appendix D).

WSDOT seeks a Design-Builder that will implement safe work zone strategies that reduce or eliminate highway lane closures and minimize impacts to motorists during construction, while maintaining access to the DNR property, public utilities, and local communities.

Submit:

1. Stormwater design plans, rendered visuals, and associated narrative describing the Proposer's stormwater management strategies. The narrative shall indicate how the Proposer will reduce the footprint of the drainage facilities while enhancing water quality. The narrative shall also address:
 - a. The Proposer's approach to minimizing impacts to the adjacent aquatic resources and forested areas associated with stormwater design while enhancing integration with the natural surroundings within the Impact Area Line.
 - b. The Proposer's stormwater management design approach to minimize long-term maintenance of the stormwater facilities.
2. A narrative describing the approach and amount of the stormwater retrofit of the existing untreated pavement to meet or exceed the Puget Sound Basin retrofit requirements in the Highway Runoff Manual. Based on the Conceptual Hydraulic Report's Retrofit Cost-Effectiveness and Feasibility Analysis (RCEF), WSDOT estimates a stormwater retrofit of existing pavement for flow control and treatment with an aggregate target of approximately 11 acres.
3. Design plans and narrative describing the approach to constructing the open-channel for stream LC-G and its crossings through the I-90/SR 18 interchange.
4. A staging and phasing plan associated and narrative outlining safe work zone strategies, the Proposer's approach to minimize impacts to motorists, and strategies for maintaining access to the DNR property, public utilities, and local communities.

Evaluation Criteria: The Proposer’s approach to the Innovative Design goal will be evaluated based on its ability to achieve the following:

Innovative Design – Adjectival Evaluation

Of the \$13,000,000 Technical Credits available for this goal, \$3,000,000 Technical Credits will be scored adjectively against the Project goal and broken down into the following areas:

- \$1,000,000 Technical Credits will be available for minimization of impacts to the adjacent aquatic resources and forested areas within the Impact Area Line.
- \$1,000,000 Technical Credits will be available for the Proposer’s approach to enhancing integration with the natural surroundings throughout the project.
- \$1,000,000 Technical credits will be available for the Proposer’s approach to minimizing long-term maintenance of proposed stormwater facilities.

Of the \$13,000,000 Technical Credits available for this goal, \$7,000,000 Technical Credits will be scored adjectively as described below:

- \$2,000,000 Technical Credits will be available for proposing a strategy to construct the open channel for Stream LC-G through the I-90 interchange through the use of efficient and innovative construction methods. The strategy must address the construction of all structures in the LC-G stream system.
- \$5,000,000 Technical Credits will be available for implementing a staging and phasing plan that reduces highway lane closures, maintains safe work zones during all Work, and minimizes impacts to motorists during construction while maintaining access to access to the DNR property, public utilities, and local communities.

Innovative Design – Quantitative Evaluation

Of the \$13,000,000 Technical Credits available for this goal, a maximum of \$3,000,000 Technical Credits will be scored quantitatively as described below:

- \$3,000,000 Technical Credits will be available for the Proposer’s ability to exceed the retrofit obligation for flow control and treatment of the existing pavement for the Project. For each 0.25 acre increment exceedance over the 11 acre value in the Retrofit Cost-Effectiveness and Feasibility Analysis (RCEF), the Proposer will earn \$75,000. Technical credits will not be prorated for partial acreage less than each 0.25 acre increment provided.

3.3.4 Goal 2: Project Management (Section 3)

A description of this project goal is provided in Section 1.3.4.

WSDOT seeks a Design-Builder that will successfully manage the Project from start-up to closeout. An experienced Design-Builder with a proactive focus will reduce WSDOT’s Quality Verification and Contract administration effort. It is important for WSDOT and the Design-Builder to work in a collaborative manner to avoid schedule impact and cost risks during all phases of the Project.

Submit:

1. A preliminary baseline schedule in Primavera P6 Version 16.2 by Oracle or later version and narrative to reflect all phases of the Project, including design,

construction, Project milestones, and closeout. The preliminary baseline schedule shall include:

- a. A logic-driven preliminary baseline schedule prepared using the critical path method in a PDF format that includes all periods of Work in Calendar Days for each proposed stage or phase.
- b. The logic-driven preliminary baseline schedule shall include the progression of obtaining the environmental permits, design and construction work including all constraints related to environmental permits, in-water work, utilities, and roadway closures.

2. A narrative describing the Proposer's plan and commitment to managing the Project close-out process and the role of the Quality Control and Quality Assurance, including finalization and submittal of Project documentation and As-Built plans. Provide a plan for establishing a collaborative culture on this Project to avoid Contract disputes and deliver the Project on time for the Contract price.
3. An organizational chart and associated narrative for Quality Control and Quality Assurance showing Major Participants and Key Personnel.
4. A narrative describing how the Engineer of Record will be empowered to resolve design changes, field changes, and nonconformance issues during design and construction.
5. A narrative describing the Proposer's communication strategies with WSDOT and Project stakeholders throughout all phases of the Work.

Evaluation Criteria: The Project Management goal will be evaluated based on the Proposers ability to achieve WSDOT's second project goal as stated in Section 1.3.4 of this ITP:

Of the \$10,000,000 Technical Credits available for this section, \$7,000,000 will be scored adjectively against the project goal and will be broken down into the following areas:

- \$2,000,000 Technical Credits will be available for the submittal of a preliminary baseline schedule that clearly shows an approach that connects environmental permitting, design, and construction including critical path work, and constraints.
- \$3,000,000 Technical Credits will be available for an approach to Project quality through all phases of the Work that will reduce Contract administration effort for WSDOT. An approach may receive a higher rating when the Proposal includes:
 - A Design-Builder team organization that will maximize efficiency of issue resolution during all phases of the Work.
 - A strategy to empower the Engineer of Record to resolve design and construction issues and non-conformance events.
- \$2,000,000 Technical Credits will be available for a collaboration approach that keeps WSDOT and Project stakeholders informed throughout all aspects of the work. A collaboration approach with WSDOT and Project stakeholders that generally meets the RFP requirements will receive a rating in the middle of the Good range. An approach may receive a rating of Very Good or Excellent when it includes early identification and communication of issues to WSDOT with options to implement cost effective solutions while maintaining the Project schedule.

Of the \$10,000,000 Technical Credits available in this section, \$3,000,000 Technical Credits will be scored quantitatively for proposing fewer than 1089 Calendar Days for Substantial Completion on Form D. A Technical Credit of \$10,000 per day will be earned for each day Form D shows a reduction in Contract Time, up to a maximum of \$3,000,000. The Contract Time Bid on Form D shall not exceed 1089 Calendar Days. Proposals which show more than 1089 Calendar Days on Form D shall be considered non-responsive and will therefore be rejected.

Technical Credit = \$10,000 per Calendar Day * (1089 – [Number of Calendar Days the Proposer provides on Form D]).

3.3.5 Goal 3: Environmental Stewardship and Collaboration (Section 4)

A description of this project goal is provided in Section 1.3.4 of this ITP.

WSDOT seeks a Design-Builder that will minimize temporary and permanent impacts to environmentally sensitive areas throughout the project limits and provide Fish Barrier Correction solutions that improve habitat quality and allow for passage of fish. An experienced Design-Builder will generate support from the Tribes and environmental agencies with effective permitting, design, and construction strategies.

Submit:

1. A narrative describing the approach that will be used by the Design-Builder to:
 - A. Gain support for the Design-Builder's fish passage design from the Tribes and WDFW.
 - B. Instill trust by the Tribes and WDFW that the Design-Builder has a thorough knowledge and understanding of all issues relevant to stream restoration and fish passage design, construction, maintenance, and long-term effective service life.
 - C. Provide a design and construction that goes beyond the minimums required by the WDFW Water Crossing Design Guidelines when needed to obtain concurrence by the Tribes and WDFW.
 - D. Strategies that will be used to avoid common barrier restoration issues such as subsurface streambed flow, flow entrainment along structures, plane bed formation and excessive degradation.
2. Proposed channel design elements, both inside and outside of the structures, that the Design-Builder will use to maximize benefits to fish passage, including details specific to stream gradient and morphology.
3. Plan sheets that convey the following information:
 - A. Details of each crossing structure proposed, including type of structure, required retaining walls or engineered slopes, the Structural Clear Span, and detailed drawings of the Fish Passage Envelope superimposed on drawings of the proposed structure which clearly demonstrate that all of the structure will be outside of the Fish Passage Envelope.
 - B. Conceptual channel design and restoration techniques, including horizontal and vertical alignment of the channel at each crossing.
4. Plans that indicate proposed permanent impacts to trees within the Impact Area Line.
5. Plans that indicate proposed clearing and grading limits, cut/fill limits, and temporary

and permanent impacts to Environmentally Sensitive Areas.

6. Provide a narrative and associated table that summarizes all impact reduction to trees and Environmentally Sensitive Areas within the Impact Area Line.

Evaluation Criteria: The Environmental Stewardship and Collaboration goal will be evaluated based on its ability to achieve WSDOT's third Project goal as stated in section 1.3.4 of this ITP.

The \$10,000,000 Technical Credits available for this Section will be scored adjectively against the Environmental Stewardship and Collaboration goal as shown below:

1. \$5,000,000 Technical Credits will be available for a design that complies with the permanent injunction regarding culvert correction and maximizes benefits to fish.
2. \$2,500,000 Technical Credits will be available for a design that minimizes impacts to trees within the Impact Area Line with a higher preference towards protecting suitable marbled murrelet habitat.
3. \$2,500,000 Technical Credits will be available for a design that minimizes impacts to Environmentally Sensitive Areas, with a higher preference towards Category 1 wetlands, and fish bearing streams.

Approaches deemed by the evaluation committee to exceed the RFP requirements in a beneficial way (providing advantages, benefits, or added value to the Project) may receive a higher rating.

3.3.6 Preliminary Minority, Small, Veterans, and Women's Business Enterprise Participation Plan (Section 5)

The Proposer shall submit a preliminary MSVWBE Participation Plan based on the MSVWBE Participation Plan Drafting Guidelines found at:
<http://www.wsdot.wa.gov/EqualOpportunity/MSVWBE.htm>. The Proposer shall include percentages only and shall omit any dollar values in the columns of the form.

3.3.7 Appendix A - Proposer Information and Certifications

The Proposer shall provide the following forms and other information in Appendix A of the Proposal:

1. Form A (*Design-Build Proposal Form and Signature Page*). If the Proposer is a joint venture, Form A must be executed by all joint venture members.
2. Form C (*Upset Amount Determination*). The Proposer shall complete Form C and upload it to the WSDOT SFTP site along with the Technical Proposal.
3. Form D (*Contract Time/Milestone Completion Deadlines*). Form D includes a blank entitled "Contract Time Bid" to be filled in by the Proposer for the purpose of establishing the deadline for Substantial Completion of the Project. The number of Calendar Days entered for "Contract Time Bid" on Form D will be used in Section 4.2 of the Contract Form to establish the Contract Time. The Proposer shall determine the number of Calendar Days to be included for "Contract Time Bid" on Form D pursuant to its plan for performance of the Work, taking into account the liquidated damages provided in the Contract.

The number of days to be shown shall start on the first Calendar Day after NTP and shall end on the scheduled date of Substantial Completion. All requirements of the Contract shall be considered in determining the number of Calendar Days shown for Contract Time Bid on Form D. In making such determination, the Proposer shall adjust the resources and rates of production so that Substantial Completion is accomplished no later than 1089 Calendar Days after issuance of Notice to Proceed.

If the Proposer fails to complete and submit Form D or fails to submit a bid for the Contract Time Bid item, WSDOT will consider the bid nonresponsive.

The Milestone Completion Deadlines provided on Form D will be considered as commitments by the Proposer in the execution of the Contract. The milestones provided and the proposed duration from NTP will be considered in the evaluation as described in Section 3.3.4 of this ITP.

4. Form E (*Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor performing 20 Percent or more of the Design-Build Work*). Design-Builder shall verify that all Subcontractors listed are confirmed (not suspended or debarred), in accordance with 48 CFR § 9.4, DOT Order 4200.5E and the WSDOT *Construction Manual*.
5. Description of Legal Structure - A detailed description of the legal structure of the entity making the Proposal. If the Proposer is a partnership or joint venture, the Proposer shall provide the full names and addresses of all partners or joint ventures, identify the equity ownership interest of each entity, and provide formation and organization information for each general partner or joint venture. If the Proposer is a limited liability entity, the Proposer shall provide full names and addresses of all equity holders in the limited liability entity and identify any entities that are financially responsible in any way for the limited liability entity. If the Proposer has not previously submitted final legal structure organizational documents, the Proposer shall provide said documents to the Proposal in this Section. Failure to submit final legal structure organizational documents to WSDOT either prior to or with the Proposal shall render the Proposal nonresponsive.
6. Joint and Several Liability Letter - If the Proposer is a joint venture, the Proposer shall provide a letter signed by an authorized representative of each joint venture stating that the joint venture agrees to be held jointly and severally liable for any and all of the duties and obligations of the Proposer under the Proposal, and if awarded, under the Contract. The Proposer shall provide evidence to each letter that the Person signing the letter has authority to do so.
7. Form G (*Non-Collusion Declaration*)
8. Form H (*Certification for Federal-Aid Contracts*). This Form is intentionally omitted.
9. Form K (*Form of Guaranty*). If the Proposer is a limited liability entity, the Proposer shall include a commitment letter from each of the equity holders of the Proposer, agreeing to provide a guaranty of the Proposer's obligations on Form K.
10. Form L (*Utility Certification*). The Proposer shall complete Form L.
11. Evidence of Authorization - Evidence of authorization to execute and deliver the Proposal and the Contract. If such authorization arises out of one or more powers of attorney, copies of the powers of attorney shall be provided as well as certified copies of the appropriate resolutions from the applicable entities' governing bodies authorizing said powers of attorney. If the Proposer is a partnership or a joint venture, such evidence shall be

provided for the Proposer and for each of its general partners/joint venture members, at all tiers, and in all cases certified by an appropriate officer.

12. Information and Work Site Certification - A certified statement that the Proposer has, prior to submitting its Proposal, in accordance with generally accepted engineering and construction practices, reviewed the Reference Documents and other information provided by WSDOT; inspected and examined the Site and surrounding locations; and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions that are discernible from the surface and affect the Project, to the extent the Proposer deemed necessary or advisable for submittal of a Proposal. The certified statement shall specifically indicate that as a result of such review, inspection, examination, and other activities, the Proposer is familiar with and accepts the Site and the physical requirements of the Work.

13. Certification Regarding Changes to Key Personnel and Major Participants - A signed statement that the Key Personnel and Major Participants identified on the Proposer's SOQ have not changed. Alternatively, the Proposer may provide a WSDOT approval letter regarding any such changes to Key Personnel or Major Participants.

14. Certification Regarding Right of Way - A signed statement that the Proposer will construct the Work within the ROW identified in the RFP. Alternatively, the Proposer may provide a WSDOT approval letter regarding any ATC that contemplates construction of the Work outside of the ROW identified in the RFP.

15. Form M (*Stipend Agreement*). The Proposer shall complete Form M.

16. Form N (*Stipend Invoice*). The Proposer shall complete Form N.

17. Form O (*Subcontractor List*). Prepared in compliance with RCW 39.30.060 as amended. The Proposal shall include a list of: (1) Subcontractors who will perform the Work of heating, ventilation, air conditioning, plumbing as described in RCW 18.106, and electrical as described in RCW 19.28; (2) the Work those Subcontractors will perform on the Contract; and (3) no more than one Subcontractor for each category of Work identified, except when Subcontractors vary with bid alternates, the bidder shall identify which Subcontractor will be used for which alternate.

18. Form R (*Organizational Conflicts of Interest - Disclosure and Avoidance/Neutralization/Mitigation Plan*). The Proposer shall complete Form R.

19. Form S (*Organizational Conflicts of Interest Certification*). The Proposer shall complete Form S.

3.3.8 Appendix B - Resumes

3.3.9 Appendix C - Details of Technical Approach and Innovations

3.3.10 Price Proposal (Section 6)

The Price Proposal shall include the information and documentation identified in this Section, Section 3.1.4, and Table 3.1.2 of this ITP.

Price Proposal

A. Schedule of Items. The Proposer shall submit its Proposal Price divided into the categories identified on the Schedule of Items in BidExpress®. The total of the Schedule of Items will be the Contract Price.

B. Proposal Bond. The Proposal shall include a Proposal bond in accordance with Section 2.14.1 of this ITP.

4.0 Proposal Evaluation Process

4.1 General

WSDOT will award the Contract (if at all) to the responsive Proposer who has complied with all of the requirements of the RFP, is technically qualified, and has the Apparent Best Value Proposal, as determined in accordance with this Section. WSDOT will notify the successful Proposer and the unsuccessful Proposers.

4.2 Technical Evaluation Scoring Summary

The technical evaluation factors are tabulated in Table 4.2 below. Proposers may be disqualified for receiving a fail for any factor that is scored P/F. The technical evaluation score will be calculated by summing the Proposer's Technical Credits earned out of the Max Technical Credits column shown in Table 4.2. The sections will be evaluated against the evaluation criteria. During the evaluation process, information in any section listed in Table 4.2 of this ITP can be used when scoring other sections.

Table 4.2 TECHNICAL EVALUATION SCORING SUMMARY

| TECHNICAL EVALUATION SCORE SHEET | MAX TECHNICAL CREDITS |
|--|-----------------------|
| TECHNICAL PROPOSAL - SECTIONS 1-5: | |
| Section 1 - Executive Summary | P/F |
| Section 2 - Goal #1 Innovative Design | \$13,000,000 |
| Section 3 - Goal #2 Project Management | \$10,000,000 |
| Section 4 - Goal #3 Environmental Stewardship and Collaboration | \$10,000,000 |
| Section 5 – MSVWBE Participation Plan | P/F |
| Appendix A – Proposer Information and Certifications | |
| Form A (<i>Design-Build Proposal Form and Signature Page</i>) | P/F |
| Form C (<i>Upset Amount Determination</i>) | P/F |
| Form D (<i>Contract Time/Milestone Completion Deadlines</i>) | P/F |
| Form E (<i>Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor Performing 20 Percent or More of the Design-Build Work</i>) | P/F |
| Description of Legal Structure | P/F |
| Joint and Several Liability Letter (if applicable) | P/F |
| Form G (<i>Non-Collusion Declaration</i>) | P/F |
| Form H (<i>Certification for Federal-Aid Contracts</i>) (This Form is intentionally omitted) | N/A |
| Form K (<i>Form of Guaranty</i>) | P/F |
| Form L (<i>Utility Certification</i>) | P/F |
| Evidence of Authorization | P/F |

| TECHNICAL EVALUATION SCORE SHEET | MAX TECHNICAL CREDITS |
|--|-----------------------|
| TECHNICAL PROPOSAL - SECTIONS 1-5: | |
| Information and Work Site Certification | P/F |
| Certification Regarding Changes to Key Personnel and Major Participants | P/F |
| Certification Regarding Right of Way | P/F |
| Form M (<i>Stipend Agreement</i>) | N/A |
| Form N (<i>Stipend Invoice</i>) | N/A |
| Form O (<i>Subcontractor List</i>) | P/F |
| Form Q (<i>Option for Use of WSDOT-Owned Property</i>) | N/A |
| Form R (<i>Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan</i>) | P/F |
| Form S (<i>Organizational Conflicts of Interest Certification</i>) | P/F |
| Appendix B - Resumes | |
| Appendix C - Details of Technical Approach and Innovations | |
| PRICE PROPOSAL - SECTION 6 | |
| Schedule of Items | P/F |
| Part II – Proposal Bond | P/F |
| GRAND TOTAL | \$33,000,000 |

4.3 Responsiveness and Pass/Fail Review

4.3.1 Initial Responsiveness Review

WSDOT will conduct an initial review of the Proposals for responsiveness to the requirements set forth in the RFP, including compliance with the pass/fail criteria set forth in Section 4.2 of this ITP. Any Proposal not responsive to the RFP shall be excluded from further consideration and the Proposer that submitted such Proposal will be so advised. WSDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation.

4.3.2 Upset Amount

As part of the responsiveness review, WSDOT will review Form C to determine if the respective Proposal Prices are less than, equal to, or greater than the Upset Amount. The Upset Amount is defined as \$130,000,000. Failure to include Form C may result in the Proposal being declared nonresponsive.

If one or more of the Proposal Prices are less than or equal to the Upset Amount, WSDOT will evaluate all Proposals and may proceed to award the Contract based on the Apparent Best Value Proposer determination (as described in Section 4.5 of this ITP) to any Proposer whose Proposal Price is less than or equal to the Upset Amount. WSDOT may also elect to proceed with discussions with the Proposers followed by a request for BAFOs from all Proposers or cancel the RFP. If no Proposal has a Proposal Price less than or equal to the Upset Amount, WSDOT will either proceed directly with discussions with the Proposers followed by a request for BAFOs or cancel the RFP. In such event, WSDOT may review the Proposals for responsiveness and also with reference to possible discussions with the Proposers.

This Upset Amount review will be performed by the WSDOT Contract Ad and Award Manager in strict confidence upon receipt of all Proposals. The WSDOT Contract Ad & Award Manager will hold all information regarding the identity of all Proposers as related to the Upset Amount Determination strictly confidential. No information regarding the Upset Amount Determination shall be given to any individuals involved in the technical evaluation process. If a Proposal Price is deemed to be greater than the Upset Amount, the Proposal will still be eligible for the stipend provided all other criteria relative to the stipend are met.

4.3.3 Pass/Fail Criteria Review

Proposals will be reviewed based on the following pass/fail criteria:

- Business form of Proposers and team members shall meet Project requirements.
- The Major Participants and Key Personnel listed in the Proposal shall not have changed since submission of its SOQ, or the Proposer shall have previously advised WSDOT of a change and received WSDOT's written approval for the change.
- Proposal bond shall have been provided in accordance with Section 2.14 of this ITP.
- Proposer information, certifications, and documents as listed in Section 3.1.2 of this ITP are included in the Proposal and are complete, accurate, and responsive, and they do not identify any material adverse changes from the information provided in the SOQ information.
- The Proposer has provided all other forms and documentation required by this ITP.

A Proposal must receive an initial "pass" on all pass/fail criteria listed in the RFP for the Proposal to be further evaluated. WSDOT may, at its sole discretion, request a Proposer to provide clarifications for purposes of determining whether the pass/fail criteria are met. Failure to achieve a "pass" rating on a pass/fail factor may result in the Proposal being declared nonresponsive. Failure to submit information in the manner, format, and detail specified may result in the Proposal receiving a "fail" rating and being declared nonresponsive. Even though a Proposal receives an initial "pass" allowing technical evaluation to proceed, the Proposal may later be determined to have failed.

The executive summary will be reviewed as pass/fail, but information can be used during evaluation of other Sections.

4.4 Evaluation of the Technical Proposal

WSDOT will evaluate each of the technical requirements described in Section 3 of this ITP against the evaluation criteria to determine the Proposal technical score. The technical evaluation scoring summary in Section 4.2 of this ITP identifies the maximum Technical Credits for each technical requirement.

The WSDOT evaluation committee will review each Proposal identifying significant and minor strengths, and significant and minor weaknesses. The evaluation committee may also use a "high" or "low" prefix to further differentiate the strengths or weaknesses. When, in the judgment of the evaluation committee, a Proposal element does not equate to a strength or weakness, but is being acknowledged, a "Neutral" will be identified.

Strengths and weaknesses are defined as follows:

- Strengths – That part of the Proposal which ultimately represents a benefit to the Project and is expected to increase the Proposer’s ability to meet or exceed the Project goals. A minor strength has a slight positive influence on the Proposer’s ability to meet or exceed the Project goals, while a significant strength has a considerable positive influence on the Proposer’s ability to meet or exceed the Project goals.
- Weaknesses – That part of the Proposal which detracts from the Proposer’s ability to meet the Project goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Proposer’s ability to meet the Project goals, while a significant weakness has a considerable negative influence on the Proposer’s ability to meet the Project goals.

Based on the identified strengths and weaknesses, the evaluation team will select an adjectival rating and select a percent of maximum score in the identified range in accordance with this section.

After selecting a percent of maximum score for each section, the Proposal score will be calculated by multiplying the percent of maximum score by the points available listed in Section 4.2 of this ITP and then summing the calculated scores.

The following adjectival rating system will be used in determining the maximum Technical Credits for sections of this ITP that are evaluated adjectively:

- Excellent (75-100 percent): The section of the Proposal demonstrates an approach that is considered to significantly exceed the RFP requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project), and provides a consistently outstanding level of quality. In order for the section of the Proposal to meet the minimum criteria to be considered Excellent, it must be determined to have significant strengths and/or a number of minor strengths and no appreciable weaknesses. The greater the significance of the strengths and/or the number of strengths will result in a higher percentage. There is virtually no risk that the Proposer would be unsuccessful in delivering the Project to WSDOT's satisfaction, and would most likely exceed all Project goals.
- Very Good (50-74 percent): The section of the Proposal demonstrates an approach that is considered to exceed the RFP requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and offers a generally better than acceptable level of quality. In order for the section of the Proposal to meet the minimum criteria to be considered to be Very Good, it must be determined to have strengths and no significant weaknesses. Minor weaknesses are offset by strengths. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor weakness will result in a higher percentage. There is little risk that the Proposer would be unsuccessful in delivering the Project to WSDOT's satisfaction, and would most likely meet and/or exceed all Project goals.
- Good (25-49 percent): The section of the Proposal demonstrates an approach that is considered to generally meet the RFP requirements/objectives and offers an acceptable level of quality. In order for the section of the Proposal to meet the minimum criteria to be considered to be Good, it must be determined to have strengths, even though minor and/or significant weaknesses exist. If a section of the Proposal meets RFP requirements it will receive a “Neutral” designation and a rating in the middle of the Good range. The greater the significance of the

strengths and/or the number of strengths, and the fewer the minor or significant weakness will result in a higher percentage. It is expected that the Proposer would be able to deliver the Project to WSDOT's satisfaction and meet all Project goals.

- Fair (0-24 percent): The section of the Proposal demonstrates an approach that contains minor and/or significant weaknesses and no appreciable strengths. The section of the Proposal may not meet the RFP requirements and may be determined to be nonresponsive.

For section 3.3.3 and 3.3.4 of this ITP, Technical Credits will determined by calculation.

WSDOT, at its sole discretion, may reject any Proposal deemed non responsive to the RFP.

4.5 Apparent Best Value Determination

4.5.1 Proposal Rating

Each responsive Proposal will be rated using the following equation:

$$\text{Score} = \$P - \$T$$

Where:

- Score = Proposal Rating
- \$P = Proposal Price
- \$T = Sum of all Technical Credits earned.

The Apparent Best Value Proposal will be that responsive Proposal with the lowest score from the equation above.

4.6 Best and Final Offer

If all Proposal Prices are less than or equal to the Upset Amount (see Section 4.3.2 of this ITP), WSDOT does not currently intend to request BAFOs, but reserves the right to do so. If all Proposal Prices exceed the Upset Amount, it is likely that WSDOT will request BAFOs. There may be other circumstances in which BAFOs may be requested (See Section 4.3.2 of this ITP).

5.0 Contract Award and Execution

Following selection of a Proposer by WSDOT and verification that the Proposer has complied with the requirements of the RFP, WSDOT will send an execution copy of the Contract to the selected Proposer. To be awarded the Contract, the selected Proposer must satisfy WSDOT's Contract award requirements by executing and delivering the Contract together with all other required documents described below, within 20 Calendar Days of receipt of the execution copy of the Contract from WSDOT. WSDOT will return to Design-Builder once copy of the Contract executed by WSDOT within 10 Calendar Days of receipt of all required documents from the Proposer:

- Executed Contract
- Evidence of authorization to execute the Contract, in the form of a certified resolution of the governing body of Proposer expressly stating such body's authorization to execute the Contract and, if the Proposer is a partnership, joint venture, unincorporated association, or limited liability company, of the governing bodies of the entity's partners or members.
- Contract Bond issued by the Surety listed in the Proposal, or an equivalent Surety meeting the requirements set forth in Section 2.14 of this ITP.

- The insurance policies, endorsements, and certificates required under Section 1-07.18 of the *General Provisions*.
- Evidence that the Proposer, its Major Participants, and other identified Subcontractors hold all licenses as of award necessary to perform the Work.
- If applicable, the guaranties in the provided Form K, together with appropriate evidence of authorization thereof.
- WSDOT Form 421-013, *Transit - Bicycle - Pedestrian Contractor's Cost Estimate* with the Design-Builder's costs for transit, bicycle, and pedestrian Work.

5.1 *Debriefing*

Within 14 Calendar Days after execution and delivery of the Contract, WSDOT will be available for an oral debriefing session. Only Proposers who submit a responsive Proposal may request a debriefing to discuss the evaluation of their Proposal. A written request must be made to the WSDOT Technical Point of Contact by an authorized representative of an unsuccessful Proposer.

5.2 *Proposal Evaluation*

Within 7 Calendar Days after the announcement of Apparent Best Value Proposer, WSDOT will email each Proposer the scoring summary and summarized evaluator comments of their Proposal.

6.0 *Practical Design Workshop*

Within 7 Calendar Days of Contract execution, and prior to issuing NTP, the parties will discuss and potentially initiate a Practical Design Workshop (PDW). During the PDW, the Design-Builder and WSDOT will bring together key Project management and technical staff to collaboratively identify practical design opportunities that may reduce Project cost, shorten duration, or reduce risk while satisfying the Project's purpose and need.

7.0 *Proposer Stipends*

WSDOT will pay a stipend of \$420,000 to all Proposers who submit a Form M (*Stipend Agreement*), Form N (*Stipend Invoice*) and responsive Proposal.

The stipend will be paid within 45 Calendar Days after award of the Contract or the decision not to award a Contract.

No Proposer shall be entitled to reimbursement of any of its costs in connection with the RFP except as specified in this Section. A Proposer that has submitted a nonresponsive Proposal will not earn a stipend.

In consideration for paying the stipend, WSDOT reserves the right to use any ideas or information contained in the unsuccessful Proposals in connection with any Contract awarded for the Project or with any subsequent procurement, without any obligation to pay any additional compensation to the Proposer. Each Proposer acknowledges that WSDOT will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or will be) paid, for the purpose of allowing concepts to be reviewed by the selected Design-Builder and incorporated into the Contract as deemed advisable. WSDOT will provide the successful Proposer with all the ATCs as soon as

practicable. The Proposer may elect to incorporate these ATCs into the Contract in accordance with Section 1-04.4 of the *General Provisions*. Furthermore, upon the Proposers' receipt of payment, the right to use such Work product will extend to other projects undertaken by WSDOT, as WSDOT deems appropriate. However, WSDOT acknowledges that the use of any of the Work product by WSDOT or the Design-Builder is at the sole risk and discretion of WSDOT and the Design-Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

7.1 *Proprietary or Confidential Information*

If Proposer selects not to accept a stipend, they may clearly designate any information contained in the Proposal that is proprietary or confidential. Marking of the entire Proposal or entire Sections of the Proposal as proprietary or confidential will not be accepted nor honored.

To the extent consistent with RCW 42.56, the Public Records Act, WSDOT shall maintain the confidentiality of Proposer's information marked confidential or proprietary. If a request is made to view Proposer's Proposal, WSDOT will notify Proposer of the request and of the date that the records will be released to the requester unless Proposer obtains a court order enjoining that disclosure. If Proposer fails to obtain the court order enjoining disclosure, WSDOT will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Proposer of any request(s) for disclosure for so long as WSDOT retains Proposer's information in WSDOT records. Failure to so label such materials or failure to timely respond after notice of request for public records has been given shall be deemed a waiver by Proposer of any claim that such materials are exempt from disclosure.

8.0 *Protests*

8.1 *Protest Procedures*

This Section sets forth the exclusive protest remedies available with respect to the RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. These protest procedures are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer are also consideration to each other Proposer for making the same waiver and agreement.

All protests and related materials shall be filed in writing, by e-mail, to the Protest Official. The e-mail subject line shall be "Protest for Contract Name and Contract Number". The Protest Official identified as:

Jenna Ball
WSDOT Contract Ad & Award office
E-mail: CAA@WSDOT.WA.GOV

If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in the RFP, it shall indemnify, defend, protect, and hold harmless WSDOT, its officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result. The submission of a Proposal by a Proposer shall be

deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

8.1.1 Protests Regarding RFP Documents

The Proposer may protest the terms of the RFP prior to the time for submission of Proposals on the grounds that (a) a material provision in the RFP is ambiguous; (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or (c) the RFP in whole or in part exceeds the authority of WSDOT. Protests regarding the RFP shall be filed only after the Proposer has submitted a written request for clarification prior to the Proposal Due Date set forth in Section 1 of this ITP in an effort to remove the grounds for protest.

Protests regarding the RFP shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Protests regarding the RFP shall be filed as soon as the basis for protest is known to the Proposer, but in any event it must be actually received by no later than 4:59:59 p.m., PT, on the 10th Calendar Day before the Proposal Due Date, provided that protests regarding an addendum to the RFP shall be filed and actually received no later than 4:59:59 p.m., PT, on the 5th Calendar Day after the addendum to the RFP is issued (or no later than the Proposal Due Date, if earlier).

WSDOT will distribute copies of the protest to the other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may, at its sole discretion, discuss the protest with the protesting Proposer. If other Proposers are requested to submit statements or arguments, they may file a statement in support of or in opposition to the protest within 7 Calendar Days of the request, and such responses shall be received no later than 4:59:59 p.m., PT, on the 7th Calendar Day after the request.

The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest unless the Protest Official or their designee agrees to a hearing. The Protest Official or their designee will decide the protest on the basis of the written submissions within 15 Calendar Days after the Protest Official receives the protest. The Protest Official will furnish copies of the decision in writing to the WSDOT Technical Point of Contact and each Proposer. The decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. If necessary to address the issues raised in the protest, WSDOT will make appropriate revisions to the RFP by issuing addenda. WSDOT may, in its sole discretion, extend the Proposal Due Date.

Notwithstanding the existence of a protest, WSDOT may, in its sole discretion, continue the procurement process or any portion thereof.

The failure of a Proposer to raise a ground for a protest regarding the RFP within the applicable period shall constitute an unconditional waiver of the right to protest the terms of the RFP and shall preclude consideration of that ground in any protest unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests.

8.1.2 Protests Regarding Responsiveness Determination or Award

A Proposer may protest any determination by WSDOT regarding lack of responsiveness or any award made by WSDOT by email to the Protest Official. Email shall be titled “Protest for Contract Name and Contract Number”. WSDOT will distribute copies of the protest to the other Proposers. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any nonresponsiveness determination must be filed by no later than 4:59:59 p.m., PT, on the 5th Calendar Day after the notification of nonresponsiveness. Notice of protest of any award by WSDOT must be filed within 9 Calendar Days after WSDOT’s opening of the Price Proposals (announcement of Apparent Best Value Proposer).

By no later than 4:59:59 p.m., PT, on the 7th Calendar Day of the notice of protest, the protesting Proposer must file with the Protest Official. The protest must include a detailed statement of the grounds, legal authorities, and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence.

Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

The other Proposers may file by e-mail to the Protest Official, with a copy to the protesting Proposer, a statement in support of or in opposition to the protest. Email shall be titled “Protest for Contract Name and Contract Number”. Such statements must be filed within 7 Calendar Days after the protesting Proposer files its detailed statement of protest.

Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole discretion of the Protest Official or their designee, a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Proposer or WSDOT. The Protest Official or their designee will issue a written decision regarding the protest within 15 Calendar Days after the Protest Official receives the detailed statement of protest. Such decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. The Protest Official or their designee will deliver the written decision to the WSDOT Technical Point of Contact and each Proposer.

If the Protest Official or their designee concludes that the Proposer filing the protest has established a basis for protest, the Protest Official or their designee will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new RFP, or taking other appropriate actions.

8.2 *Judicial Review*

Any decision made by WSDOT regarding the award and execution of the Contract or Proposal rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Documents requesting such review, if any, shall be timely filed in the Superior Court of Thurston County, Washington.

PROPOSAL FORMS

| | | |
|----|--------|---|
| 1 | | |
| 2 | Form A | <i>Design-Build Proposal Form and Signature Page</i> |
| 3 | Form C | <i>Upset Amount Determination</i> |
| 4 | Form D | <i>Contract Time/Milestone Completion Deadlines</i> |
| 5 | Form E | <i>Identification of Proposer, Guarantors, Major Participants, Earthwork</i> |
| 6 | | <i>Subcontractors, Structures Subcontractors and Each Subconsultant and</i> |
| 7 | | <i>Subcontractor Performing 20 Percent or More of the Design-Build Work</i> |
| 8 | Form G | <i>Non-Collusion Declaration</i> |
| 9 | Form H | <i>Certification for Federal-Aid Contracts (This Form is intentionally omitted)</i> |
| 10 | Form K | <i>Form of Guaranty</i> |
| 11 | Form L | <i>Utility Certification</i> |
| 12 | Form M | <i>Stipend Agreement</i> |
| 13 | Form N | <i>Stipend Invoice</i> |
| 14 | Form O | <i>Subcontractor List</i> |
| 15 | Form Q | <i>Option for Use of WSDOT-Owned Property</i> |
| 16 | Form R | <i>Organizational Conflicts of Interest – Disclosure and</i> |
| 17 | | <i>Avoidance/Neutralization/Mitigation Plan</i> |
| 18 | Form S | <i>Organizational Conflicts of Interest Certification</i> |

FORM A

DESIGN-BUILD PROPOSAL FORM AND SIGNATURE PAGE

Washington State Department of Transportation

Design-Build Request for Proposal

I-90/SR 18 I/C to Deep Creek - Interchange Improvements and Widening Project

PROPOSER: _____

Proposal Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Jenna Ball

WSDOT Contract Ad & Award Office

Transportation Building, Room 2D-20

310 Maple Park Avenue SE

Olympia, WA 98501-2361

The undersigned (“Proposer”) submits this Proposal (the “Proposal”) in accordance with the Instructions to Proposers (ITP) contained in the Request for Proposal (RFP) issued by Washington State Department of Transportation (WSDOT), dated _____, for the I-90/SR 18 I/C to Deep Creek – Interchange Improvements and Widening Project (the “Project”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the ITP. If the Proposer is a joint venture, or Limited Liability Company (LLC), the agreements, acknowledgments, certifications and representations contained herein shall be deemed made jointly and severally by each joint venture or LLC member.

- 1) In consideration for WSDOT supplying us, at our request, with the RFP documents and agreeing to examine and consider this Proposal, the undersigned agrees:

to keep this Proposal open for acceptance for 90 Calendar Days after the Proposal Due Date without any member or partner withdrawing or any other change being made in the Proposer’s organization, unless WSDOT has agreed in its sole discretion and in writing to such change or withdrawal; and;

if this Proposal is accepted, to provide the Contract Bond securing the due performance of the design-build Contract (the “Contract”) as stipulated in the Contract and the RFP.

- 2) If selected by WSDOT, Proposer agrees to (a) execute the Contract to design and construct the Project in accordance with the Contract Documents and (b) to provide all documents and satisfy all other requirements set forth in Section 5 of this ITP.

- 3) Enclosed herewith, and by this reference incorporated herein and made a part of this Proposal, are the following:

Section 1 Executive Summary

Section 2 Goal 1: Innovative Design

Section 3 Goal 2: Project Management

Section 4 Goal 3: Environmental Stewardship and Collaboration

Section 5 MSVWBE Participation Plan

- 4) Proposer acknowledges receipt, understanding, and full consideration of all RFP documents, other documents identified on the Project website (www.wsdot.wa.gov) and the following addenda to the RFP:

• [List addenda, if applicable]

- 5) Proposer certifies that it has carefully examined and is fully familiar with the RFP documents and is satisfied that such provisions provide sufficient detail regarding the Work and the other obligations of the Design-Builder under the Contract and do not contain internal inconsistencies; that it has carefully checked all the words, figures, and statements in its Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal, including a thorough review of all of the RFP documents; and that it has notified WSDOT of any deficiencies in or omissions from any RFP documents or other documents provided by WSDOT and of any unusual Site conditions observed prior to the date hereof.
- 6) Proposer agrees that its Statement of Qualifications, as modified by this Proposal, is incorporated into this Proposal as if fully set forth herein. Proposer certifies that each, every, and all of the representations made by Proposer in this Proposal are true and correct.
- 7) Proposer understands that WSDOT is not bound to accept the lowest priced Proposal or any Proposal.
- 8) Proposer further understands that all expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except to the extent that the Proposer receives the stipend as provided for in the RFP.
- 9) Proposer agrees that WSDOT will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.
- 10) This Proposal shall be governed by and construed in all respects according to the laws of the State of Washington.

The undersigned affirms that the information provided herein is true and accurate and that any misrepresentations are made under penalty of perjury.

Dated _____, _____
Proposer _____

[Insert name of the Proposer, identify the type of organization and State or country of organization, and if the Proposer is a joint venture provide signature blocks for each joint venture member.]

[Insert appropriate signature block from below.]

- 1) Sample signature block for corporation or LLC:

[Insert the Proposer's name]

By: _____

Type Name: _____

Title: _____

- 2) Sample signature block for partnership or joint venture:

[Insert the Proposer's name]

By: *[Insert general partner's or member's name]*

Type Name: _____

1 Title: _____

2 By: _____

3 Print Name: _____

4 Title: _____

5 *[Add signatures of additional general partners or members as appropriate. If Proposer is*
6 *a joint venture, all joint venture members must individually execute this document.]*

7 3) Sample signature block for attorney in fact:

8 *[Insert the Proposer's name]*

9 By: _____

10 Type Name: _____

11 Attorney in Fact: _____

FORM C

UPSET AMOUNT DETERMINATION

**Washington State Department of Transportation
Design-Build Request for Proposal
I-90/SR 18 I/C to Deep Creek - Interchange Improvements and Widening Project**

Proposer Name: _____

Is the Total Proposal Price less than or equal to the Upset Amount of \$130,000,000?

Check One: ☐ Yes ☐ No

Signed: _____ Date: _____

Name: _____ Title: _____

FORM D

CONTRACT TIME/MILESTONE COMPLETION DEADLINES

**Washington State Department of Transportation
Design-Build Request for Proposal
I-90/SR 18 I/C to Deep Creek - Interchange Improvements and Widening Project**

Name of Proposer: _____

Contract Time Bid: _____ (Notice to Proceed to Substantial Completion, Maximum allowable of 1089 Calendar Days)

| Milestones | Milestone Completion Deadlines |
|--|---|
| | Proposed Duration (Calendar Days from Notice to Proceed) |
| | A. _____ Calendar Days (1089 Max.) |
| A. Substantial Completion ⁽¹⁾ | |

Notes:

- 0) Requirements for Substantial Completion are provided in Section 1-08.5(1).3 of the General Provisions.

FORM E

**IDENTIFICATION OF PROPOSER, GUARANTORS, MAJOR PARTICIPANTS,
EARTHWORK SUBCONTRACTORS, STRUCTURES SUBCONTRACTORS AND
EACH SUBCONSULTANT AND SUBCONTRACTOR PERFORMING 20 PERCENT
OR MORE OF THE DESIGN-BUILD WORK**

Washington State Department of Transportation

Design-Build Request for Proposal

I-90/SR 18 I/C to Deep Creek - Interchange Improvements and Widening Project

| NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, email) | ROLE IN ORGANIZATION (e.g., Proposer, Equity Owner in Proposer, Guarantor, Other Major Participant or Subcontractor) | State of Washington Contractor License and License Limit (provide copies) | Description of Work/Services |
|--|---|--|---|
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Proposer shall verify that all Subcontractors listed are confirmed (not suspended or debarred), in accordance with 48 CFR § 9.4, DOT Order 4200.5E and the WSDOT *Construction Manual*.

The undersigned hereby certifies that the above information is true and correct and that the Proposer has not entered into any substantive negotiations with any entity that falls within the definition of "Major Participant" resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

STATE OF _____)
) SS:
COUNTY OF _____)

The undersigned, being first duly sworn, deposes and says that _____ is the
_____ of _____ and _____ is the
_____ of _____, which entity(ies) are the
_____ of _____, the Proposer identified in the foregoing
Proposal, and that the answers to the foregoing questions and all other statements therein are true
and correct.

Signature: _____

Name: _____

Title: _____

FORM G

NON-COLLUSION DECLARATION

Failure to return this Declaration as part of the bid Proposal package will make the bid nonresponsive and ineligible for award.

I, by signing the Proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned Person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Project for which this Proposal is submitted.
2. That by signing the signature page of this Proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities shall use the hotline to report such activities.

The hotline is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

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4

FORM H
CERTIFICATION FOR FEDERAL-AID CONTRACTS
This Form is intentionally omitted

1 **FORM K**

2 **FORM OF GUARANTY**

3 **Washington State Department of Transportation**

4 **Design-Build Request for Proposal**

5 **I-90/SR 18 I/C to Deep Creek - Interchange Improvements and Widening Project**

6 **THIS GUARANTY** (this “**Guaranty**”) is made as of _____,
7 by _____, a _____ (“**Guarantor**”), in favor of the **WASHINGTON**
8 **STATE DEPARTMENT OF TRANSPORTATION (WSDOT).**

9 **R E C I T A L S**

- 10 1. _____ (“**Design-Builder**”), and WSDOT are parties to that certain Design-
11 Build Contract dated _____ (the “**Contract**”) pursuant to which the Design-
12 Builder has agreed to design and construct the Project. Initially capitalized terms used
13 herein without definition will have the meaning given such terms in the Contract.
- 14 2. To induce WSDOT to (i) enter into the Contract; and (ii) consummate the transactions
15 contemplated thereby, Guarantor has agreed to enter into this Guaranty.
- 16 3. Design-Builder is a _____ [*describe relationship with Guarantor*]. The
17 execution of the Contract by WSDOT and the consummation of the transactions
18 contemplated thereby will materially benefit Guarantor. Without this Guaranty, WSDOT
19 would not have entered into the Contract with Design-Builder. Therefore, in
20 consideration of WSDOT’s execution of the Contract and consummation of the
21 transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

22 **NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and
23 valuable consideration, the receipt and sufficiency of which are hereby acknowledged,
24 Guarantor agrees as follows:

- 25 1. **Guaranty.** Guarantor guarantees to WSDOT and its successors and assigns the full and
26 prompt payment and performance when due of all of the obligations of the Design-
27 Builder arising out of, in connection with, under or related to (i) the Contract as amended
28 or supplemented (and the documents executed or to be executed in connection therewith),
29 and (ii) each and every other document and agreement executed by the Design-Builder in
30 connection with the consummation of the transactions contemplated by the Contract (the
31 documents described in clauses (i)-(ii) shall collectively be referred to herein as the
32 “**Project Documents**”). The obligations guaranteed pursuant to this Guaranty are
33 collectively referred to herein as the “**Guaranteed Obligations.**”
- 34 2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance
35 and not of collection and is an absolute, unconditional, and irrevocable guarantee of the
36 full and prompt payment and performance when due of all of the **Guaranteed Obligations**,
37 whether or not from time to time reduced or extinguished or hereafter increased or
38 incurred, whether or not recovery may be, or hereafter may become, barred by any statute
39 of limitations or otherwise, and whether or not enforceable against the Design-Builder. If
40 any payment made by the Design-Builder or any other Person and applied to the
41 **Guaranteed Obligations** is at any time annulled, set aside, rescinded, invalidated, declared
42 to be fraudulent or preferential, or otherwise required to be repaid or refunded, then, to
43 the extent of such payment or repayment, the liability of Guarantor will be and remain in
44 full force and effect as fully as if such payment had never been made. Guarantor

covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged, or otherwise affected by (i) any change in the Project Documents or the obligations thereunder, or any insolvency, bankruptcy, or similar proceeding affecting the Design-Builder, Guarantor, or their respective assets, and (ii) the existence of any claim or set-off which the Design-Builder has or Guarantor may have against WSDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity, or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefore or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations of this Guaranty.

3. **Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Design-Builder and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Design-Builder is joined therein. WSDOT may maintain successive actions for other defaults of Guarantor. WSDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that WSDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Design-Builder. Guarantor hereby waives the right to require WSDOT to proceed against the Design-Builder, to exercise any right or remedy under any of the Project Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement, or stipulation between the Design-Builder and WSDOT or their respective successors and assigns, with respect to any of the Project Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants, or conditions contained in any of the Project Documents or any modification thereof; (iii) any release of the Design-Builder from any liability with respect to any of the Project Documents; or (iv) any release or subordination of any collateral then held by WSDOT as security for the performance by the Design-Builder of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity, or enforceability of any of the Project Documents or the pursuit by WSDOT of any remedies which WSDOT either now has or may hereafter have with respect thereto under any of the Project Documents.

1 4. **Liability of Guarantor.** WSDOT may enforce this Guaranty upon the occurrence of a
2 breach by the Design-Builder of any of the Guaranteed Obligations, notwithstanding the
3 existence of any dispute between WSDOT and the Design-Builder with respect to the
4 existence of such a breach.

5 Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no
6 way limit, affect, modify, or abridge Guarantor's liability for those Guaranteed
7 Obligations that have not been performed.

8 WSDOT, upon such terms as it deems appropriate, without notice or demand and without
9 affecting the validity or enforceability of this Guaranty or giving rise to any reduction,
10 limitation, impairment, discharge, or termination of Guarantor's liability hereunder, from
11 time to time may (i) with respect to the financial obligations of the Design-Builder,
12 renew, extend, accelerate, increase the rate of interest on, or otherwise change the time,
13 place, manner, or terms of payment of such financial obligations that are Guaranteed
14 Obligations, and/or subordinate the payment of the same to the payment of any other
15 obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of
16 performance with respect to, or substitutions for, the Guaranteed Obligations or any
17 agreement relating thereto; (iii) request and accept other guarantees of the Guaranteed
18 Obligations and take and hold security for the payment and performance of this Guaranty
19 or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise,
20 settle, rescind, waive, alter, subordinate, or modify, with or without consideration, any
21 security for performance of the Guaranteed Obligations, any other guarantees of the
22 Guaranteed Obligations, or any other obligation of any Person with respect to the
23 Guaranteed Obligations; (v) enforce and apply any security hereafter held by or for the
24 benefit of WSDOT in respect of this Guaranty or the Guaranteed Obligations and direct
25 the order or manner of sale thereof, or exercise any other right or remedy that WSDOT
26 may have against any such security, as WSDOT in its discretion may determine; and (vi)
27 exercise any other rights available to it under the Project Documents.

28 This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable
29 and will not be subject to any reduction, limitation, impairment, discharge, or termination
30 for any reason (other than indefeasible performance in full of the Guaranteed
31 Obligations), including without limitation the occurrence of any of the following,
32 whether or not Guarantor will have had notice or knowledge of any of them: (i) any
33 failure or omission to assert or enforce or agreement or election not to assert or enforce,
34 or the stay or enjoining, by order of court, by operation of law or otherwise, of the
35 exercise or enforcement of, any claim or demand or any right, power, or remedy (whether
36 arising under the Project Documents, at law, in equity, or otherwise) with respect to the
37 Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any
38 rescission, waiver, amendment, or modification of, or any consent to departure from, any
39 of the terms or provisions (including without limitation provisions relating to events of
40 default) of the Project Documents or any agreement or instrument executed pursuant
41 thereto; (iii) WSDOT's consent to the change, reorganization, or termination of the
42 corporate structure or existence of the Design-Builder; (iv) any defenses, set-offs, or
43 counterclaims that the Design-Builder may allege or assert against WSDOT in respect of
44 the Guaranteed Obligations, including but not limited to failure of consideration, breach
45 of warranty, payment, statute of frauds, accord and satisfaction, and usury; and (v) any
46 other act or thing or omission, or delay to do any other act or thing, which may or might
47 in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the
48 Guaranteed Obligations.

- 1 5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not
2 to assert or take advantage of: (i) any right to require WSDOT to proceed against the
3 Design-Builder or any other Person or to proceed against or exhaust any security held by
4 WSDOT at any time or to pursue any right or remedy under any of the Project
5 Documents or any other remedy in WSDOT's power before proceeding against
6 Guarantor; (ii) any defense that may arise by reason of the incapacity, lack of WSDOT,
7 death or disability of, or revocation hereof by Guarantor, the Design-Builder, or any other
8 Person or the failure of WSDOT to file or enforce a claim against the estate (either in
9 administration, bankruptcy, or any other proceeding) of any such Person; (iii) any defense
10 that may arise by reason of any presentment, demand for payment or performance or
11 otherwise, protest or notice of any other kind or lack thereof; (iv) any right or defense
12 arising out of an election of remedies by WSDOT even though the election of remedies,
13 such as non-judicial foreclosure with respect to any security for the Guaranteed
14 Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement
15 against the Design-Builder by the operation of law or otherwise; (v) all notices to
16 Guarantor, to the Design-Builder, or to any other Person, including, but not limited to,
17 notices of the acceptance of this Guaranty or the creation, renewal, extension,
18 modification, accrual of any of the obligations of the Design-Builder under any of the
19 Project Documents, or of default in the payment or performance of any such obligations,
20 enforcement of any right or remedy with respect thereto, or notice of any other matters
21 relating thereto; (vi) any requirements of diligence or promptness on the part of WSDOT;
22 (vii) any defense arising out of the lack of validity or the unenforceability of the
23 Guaranteed Obligations or any agreement or instrument relating thereto or by reason of
24 the cessation of the liability of the Design-Builder or any other Person from any cause
25 other than indefeasible performance in full of the Guaranteed Obligations; (viii) any
26 defense based upon any statute or rule of law which provides that the obligation of a
27 Surety must be neither larger in amount nor in other respects more burdensome than that
28 of the principal or which reduces a Surety's or guarantor's obligation in proportion to the
29 principal obligation; (ix) any defense based upon any act or omission of WSDOT which
30 directly or indirectly results in or aids the discharge or release of the Design-Builder,
31 Guarantor, or any security given or held by WSDOT in connection with the Guaranteed
32 Obligations; and (x) any and all suretyship defenses under applicable law.
- 33 6. **Waiver of Subrogation and Rights of Reimbursement; Subordination.** Until the
34 Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim,
35 right, or remedy which it may now have or may hereafter acquire against the Design-
36 Builder that arises from the performance of Guarantor hereunder, including, without
37 limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration,
38 contribution, or indemnification, or participation in any claim, right, or remedy of
39 WSDOT against the Design-Builder, or any other security or collateral that WSDOT now
40 has or hereafter acquires, whether or not such claim, right, or remedy arises in equity,
41 under contract, by statute, under common law or otherwise. All existing or future
42 indebtedness of Design-Builder or any shareholders, partners, members, or joint ventures
43 of Design-Builder to Guarantor is subordinated to all of the Guaranteed Obligations.
44 Whenever and for so long as the Design-Builder shall be in default in the performance of
45 a Guaranteed Obligation, no payments with respect to any such indebtedness shall be
46 made by Design-Builder or any shareholders, partners, members, or joint ventures of
47 Design-Builder to Guarantor without the prior written consent of WSDOT. Any payment
48 by Design-Builder or any shareholders, partners, members, or joint ventures of Design-

1 Builder to Guarantor in violation of this provision shall be deemed to have been received
2 by Guarantor as trustee for WSDOT.

3 7. **Cumulative Rights.** All rights, powers, and remedies of WSDOT hereunder will be in
4 addition to and not in lieu of all other rights, powers, and remedies given to WSDOT,
5 whether at law, in equity or otherwise.

6 8. **Representations and Warranties.** Guarantor represents and warrants that:

7 a. it is a _____ duly [organized][formed], validly existing, and in good
8 standing under the laws of the State of _____;

9 b. it has all requisite [corporate][partnership][limited liability company] power and
10 WSDOT to execute, deliver and perform this Guaranty;

11 c. the execution, delivery, and performance by Guarantor of this Guaranty have been
12 duly authorized by all necessary corporate action on the part of Guarantor;

13 d. this Guaranty has been duly executed and delivered and constitutes the legal, valid,
14 and binding obligation of Guarantor, enforceable against Guarantor in accordance
15 with its terms;

16 e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment
17 of the terms, conditions, and provisions hereof, will conflict with, result in a material
18 breach or violation of the terms, conditions, or provisions of, or constitute a material
19 default, an event of default, or an event creating rights of acceleration, termination, or
20 cancellation, or a loss of rights under (1) [the certificate of incorporation or by-
21 laws][certificate of limited partnership or partnership agreement][certificate of
22 formation or limited liability company agreement] of Guarantor; (2) any judgment,
23 decree, order, contract, agreement, indenture, instrument, note, mortgage, lease,
24 governmental permit, or other authorization, right restriction, or obligation to which
25 Guarantor is a party or any of its property is subject or by which Guarantor is bound;
26 or (3) any Federal, State, or local law, statute, ordinance, rule, or regulation
27 applicable to Guarantor;

28 f. it now has and will continue to have full and complete access to any and all
29 information concerning the transactions contemplated by the Project Documents or
30 referred to therein, the financial status of the Design-Builder and the ability of the
31 Design-Builder to pay and perform the Guaranteed Obligations;

32 g. it has reviewed and approved copies of the Project Documents and is fully informed
33 of the remedies WSDOT may pursue, with or without notice to the Design-Builder or
34 any other Person, in the event of default of any of the Guaranteed Obligations;

35 h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain
36 unsatisfied, it will make its own credit analysis of the Design-Builder and will keep
37 itself fully informed as to all aspects of the financial condition of the Design-Builder,
38 the performance of the Guaranteed Obligations of all circumstances bearing upon the
39 risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor
40 hereby waives and relinquishes any duty on the part of WSDOT to disclose any
41 matter, fact, or thing relating to the business, operations, or conditions of the Design-
42 Builder now known or hereafter known by WSDOT;

43 i. no consent, authorization, approval, order, license, certificate, or permit or act of or
44 from, or declaration or filing with, any governmental WSDOT or any party to any
45 contract, agreement, instrument, lease, or license to which Guarantor is a party or by

- 1 which Guarantor is bound, is required for the execution, delivery, or compliance with
2 the terms hereof by Guarantor, except as have been obtained prior to the date
3 hereof; and
- 4 j. there is no pending or, to the best of its knowledge, threatened action, suit,
5 proceeding, arbitration, litigation, or investigation of or before any governmental
6 Person which challenges the validity or enforceability of this Guaranty.
- 7 9. **Governing Law.** The validity, interpretation, and effect of this Guaranty are governed by
8 and will be construed in accordance with the laws of the State of Washington applicable
9 to contracts made and performed in such State and without regard to conflicts of law
10 doctrines except to the extent that certain matters are pre-empted by Federal law or are
11 governed by the law of the jurisdiction of organization of the respective parties.
- 12 10. **Entire Document.** This Guaranty contains the entire agreement of Guarantor with
13 respect to the transactions contemplated hereby, and supersedes all negotiations,
14 representations, warranties, commitments, offers, contracts, and writings prior to the date
15 hereof, written or oral, with respect to the subject matter hereof. No waiver, modification,
16 or amendment of any provision of this Guaranty is effective unless made in writing and
17 duly signed by WSDOT referring specifically to this Guaranty, and then only to the
18 specific purpose, extent, and interest so provided.
- 19 11. **Severability.** If any provision of this Guaranty is determined to be unenforceable for any
20 reason by a court of competent jurisdiction, it will be adjusted rather than voided, to
21 achieve the intent of the parties, and all of the provisions not deemed unenforceable will
22 be deemed valid and enforceable to the greatest extent possible.
- 23 12. **Notices.** Any communication, notice, or demand of any kind whatsoever under this
24 Guaranty shall be in writing and by electronic communication, with return receipt
25 requested, email address as follows:
- 26 If to WSDOT: _____
27 _____
28 _____
29 Attn: _____
30 Telephone: _____
- 31 If to Guarantor: _____
32 _____
33 _____
34 Attn: _____
35 Telephone: _____
- 36 Either Guarantor or WSDOT may from time to time change its address for the purpose of
37 notices by a similar notice specifying a new address, but no such change is effective until
38 it is actually received by the party sought to be charged with its contents.
- 39 All notices and other communications required or permitted under this Guaranty which are
40 addressed as provided in this Section are effective upon delivery .

- 1 13. **Captions.** The captions of the various Sections of this Guaranty have been inserted only
2 for convenience of reference and do not modify, explain, enlarge, or restrict any of the
3 provisions of this Guaranty.
- 4 14. **Construction of Guaranty.** Ambiguities or uncertainties in the wording of this Guaranty
5 will not be construed for or against any party, but will be construed in the manner that
6 most accurately reflects the parties' intent as of the date hereof.
- 7 15. **No Waiver.** Any forbearance or failure to exercise, and any delay by WSDOT in
8 exercising, any right, power, or remedy hereunder will not impair any such right, power,
9 or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise
10 of any such right, power, or remedy.
- 11 16. **Bankruptcy; Reinstatement of Guaranty.** The obligations of Guarantor under this
12 Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended, or
13 terminated by any proceeding, voluntary or involuntary, involving the bankruptcy,
14 insolvency, receivership, reorganization, liquidation, or arrangement of the Design-
15 Builder or by any defense which the Design-Builder may have by reason of the order,
16 decree, or decision of any court or administrative body resulting from any such
17 proceeding. WSDOT is not obligated to file any claim relating to the Guaranteed
18 Obligations if the Design-Builder becomes subject to a bankruptcy, reorganization, or
19 similar proceeding and the failure of WSDOT to so file will not affect Guarantor's
20 obligations under this Guaranty.
- 21 17. **Attorneys' Fees.** Guarantor agrees to pay to WSDOT without demand reasonable
22 attorneys' fees and all expenses (including such fees and costs of litigation, arbitration,
23 and bankruptcy, and including appeals) incurred by WSDOT in enforcing, collecting, or
24 compromising any Guaranteed Obligation or enforcing or collecting this Guaranty
25 against Guarantor or in attempting to do any or all of the foregoing.
- 26 18. **Consent to Jurisdiction.** Guarantor and WSDOT agree that any action or proceeding to
27 resolve a dispute between Guarantor and WSDOT concerning the interpretation,
28 application or enforcement of the terms of this Guaranty may only be brought in the
29 Superior Court of Thurston County, Washington pursuant to Washington Law. Guarantor
30 and the WSDOT accepts for itself and in connection with ITS properties, generally and
31 unconditionally, the jurisdiction of the aforesaid Court and waives any defense of forum
32 non convenience. If not a resident of the State of Washington, Guarantor must appoint
33 and maintain an agent for service of process in the State of Washington.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

at _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

FORM L

UTILITY CERTIFICATION

(To be signed by authorized signatory(ies) of Proposer)

The undersigned certifies by signing and submitting this Proposal, to the best of his or her knowledge and belief, that the Proposal Price does not contain any monies, funds, costs and/or amounts of any kind or nature for the payment of Relocation of Utilities that are located in WSDOT Right of Way pursuant to franchise or permit. This certification does not apply in the case of a franchise or permit which contains a specifically designated right of reimbursement to the Utility Owner for Utility Relocation. In addition, this certification does not apply in the case of a Utility Relocation that is specifically identified as a line bid item in Request for Proposal Price Proposal Part I – Schedule of Items.

Proposal documents that serve as a basis for the Proposal Price shall be subject to the audit requirements of Section 1-09.12 of the *General Provisions*.

A Proposal that does not include this certificate will be considered nonresponsive.

The undersigned shall require that the language of this certificate be in all lower tier contracts including but not limited to contracts with Subcontractors, vendors, and suppliers.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed: _____ Date: _____

Name: _____ Title: _____

FORM M

STIPEND AGREEMENT

I-90/SR 18 I/C to Deep Creek - Interchange Improvements and Widening Project

Design-Build Request for Proposal
Washington State Department of Transportation Project

THIS STIPEND AGREEMENT (this “Agreement”) is made and entered into as of this _____, _____, by and between the Washington State Department of Transportation (WSDOT), _____, a _____, (“Proposer”), with reference to the following facts:

Proposer is one of the entities pre-qualified to submit Proposals for the I90/SR18 Interchange Improvement and Widening Project (the “Project”) and wishes to submit a Proposal in response to the Request for Proposal (RFP) for the Project issued by WSDOT.

- 1) The RFP requires each Proposer to include an executed Stipend Agreement in the Proposal, as a condition to the WSDOT’s obligation to pay a stipend to the Proposer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services and Performance.** WSDOT hereby retains Proposer to prepare a responsive Proposal in response to the RFP. A “responsive” Proposal means a Proposal submitted by a qualified Proposer, which conforms in all material respects to the requirements of the RFP, as determined by WSDOT, and is timely received by WSDOT.

Subject to the provisions of the RFP documents regarding ownership of Escrow Proposal Documents (EPDs), all Work performed by Proposer and its team members pursuant to this Agreement shall be considered work for hire, and the products of such Work shall become the property of WSDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the RFP.

2. **Term.** Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until execution of the Contract or until 1 year from the date of the execution of this Agreement, whichever occurs first. Services are authorized to commence effective upon the execution date of this Agreement and Proposal, and they are due by the dates set forth in the RFP.

3. **Compensation and Payment**

- a. Compensation payable to Proposer for the services described herein shall be in the amount of \$420,000.
- b. Payment will be owing hereunder only after receipt and approval of goods and services, and will be made within 45 Calendar Days after award of the Contract or the decision not to award a contract. The Proposer has completed and included an invoice

using Request for Proposal Form N, *Stipend Invoice* provided in the ITP. WSDOT will advise Proposer when said Contract is executed.

- c. This Agreement involves the submission of a Proposal by Proposer that must be received by the Proposal Due Date set forth in the RFP and determined responsive by WSDOT as a condition of payment.

4. Indemnities

- a. Subject to the limitations contained in Section 6 of this ITP, the Proposer shall indemnify, protect and hold harmless WSDOT and its directors, officers, employees and contractors from, and Proposer shall defend at its own expense, all claims, costs, expenses, liabilities, demands, or suits at law or equity of, by or in favor of or awarded to any third party arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives or Subcontractors or breach of any of Proposer's obligations under this Agreement.
- b. Furthermore, if any claim or suit is caused by or results from the concurrent negligence of Proposer or its agents, officers, employees or representatives, this indemnity provision shall be enforceable only to the extent of Proposer's negligence or the negligence of Proposer's agents, officers, employees, representatives or Subcontractors.

5. Compliance with Laws

- a. Proposer acknowledges that all written correspondence, exhibits, photographs, reports, material, tapes, electronic disks, and other graphic and visual aids submitted to WSDOT during this procurement process, excluding only the EPDs, are, upon their receipt by WSDOT, the property of WSDOT and are subject to the Washington Public Records Act.
- b. Proposer shall comply with all Federal, State, and local laws, ordinances, rules, and regulations applicable to the Work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of Work under this Agreement.
- c. Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to Work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any Subcontract into which it might enter with reference to the Work performed pursuant to this Agreement.

6. Early Termination

This Agreement may be terminated by WSDOT in whole or in part at any time termination is in the interest of WSDOT. No payment will be owing by WSDOT in the event of any such termination, except as provided in paragraph 3(a) above.

7. Assignment

Proposer shall not assign this Agreement without WSDOT's prior written consent. Any assignment of this Agreement without such consent shall be null and void.

8. Miscellaneous

- a. Proposer and WSDOT agree that Proposer, its team members, and their respective employees are not agents of WSDOT as a result of this Agreement.

- b. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.
- c. This Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- d. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Washington, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
- e. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: _____

Title: _____

[Insert Proposer's Name]

By: _____

Name: _____

Title: _____

FORM N
STIPEND INVOICE

Company: _____

Address: _____

Phone: _____

Fax: _____

Contact: _____

Email: _____

Invoice Date: _____

Payment Terms: Due within 45 Calendar Days after award of the Contract or after the decision not to award the Contract.

Invoice #: _____

Job Reference: _____

Bill To:

WSDOT

Attn: Mark Allison, P.E.

Connecting Washington – Design Project Engineer

Allisom@wsdot.wa.gov

| <i>Description</i> | <i>Price</i> |
|--|--------------|
| Stipend payment in accordance with Form M, <i>Stipend Agreement</i> of the design-build Proposal for the I-90/SR 18 I/C to Deep Creek Interchange Improvement and Widening Project | \$420,000 |
| Subtotal | \$420,000 |
| Sales Tax | N/A |
| Total | \$420,000 |

Make all checks payable to: _____

1 **FORM O**

2
3 **SUBCONTRACTOR LIST**

4 Prepared in compliance with RCW 39.30.060
5 TO BE SUBMITTED WITH THE BID PROPOSAL

6 Project Name: _____

7 **Failure to list Subcontractors who are proposed, and who will directly subcontract to**
8 **Design-Builder to perform the Work of structural steel installation, rebar installation,**
9 **heating, ventilation and air conditioning, plumbing, as described in RCW 18.106, and**
10 **electrical as described in RCW 19.28 or naming more than one Subcontractor to**
11 **perform the same Work will result in your Proposal being nonresponsive and therefore**
12 **void.**

13 Subcontractor(s) that are proposed, and who will directly subcontract to Design-Builder to
14 perform the Work of structural steel installation, rebar installation, heating, ventilation and air
15 conditioning, plumbing, as described in RCW 18.106, and electrical as described in RCW 19.28
16 must be listed below. The Work to be performed is to be listed below the Subcontractor(s) name.

17 To the extent the Project includes one or more categories of Work referenced in RCW
18 39.30.060, and no Subcontractor is listed below to perform such Work, the Proposer certifies
19 that the Work will either (i) be performed by the Design-Builder itself, or (ii) be performed
20 by a lower tier Subcontractor who will not contract directly with the Design-Builder..

21 Subcontractor Name:

22 Work to be performed:

23 Subcontractor Name:

24 Work to be performed:

25 Subcontractor Name:

26 Work to be performed:

27 Subcontractor Name:

28 Work to be performed:

29 Subcontractor Name:

30 Work to be performed:

31 * Proposers are notified that is the opinion of the enforcement agency that PVC or metal
32 conduit, junction boxes, etc., are considered electrical equipment and must be installed by a
33 licensed electrical Subcontractor, even if the installation is for future use and no wiring or
34 electrical current is connected during the Project.

FORM Q

OPTION FOR USE OF WSDOT-OWNED PROPERTY
Washington State Department of Transportation
Design-Build Request for Proposal

This Form is intentionally omitted.

FORM R

**ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE AND
AVOIDANCE/NEUTRALIZATION/MITIGATION PLAN**

This disclosure statement outlines potential organizational conflicts of interest, either real or apparent, which are a result of activities or relationships with other Persons or entities, such Person or entity:

- Is unable or potentially unable to render impartial assistance or advice to the Washington State Department of Transportation (WSDOT)
- Is or might be otherwise impaired in its objectivity in performing the Contract Work
- Has an unfair competitive advantage

SECTION I of this disclosure statement describes the potential organizational conflicts of interest, as described in WSDOT Secretary's Executive Order E 1059.00 and WSDOT *Organizational Conflicts of Interest Manual*. SECTION II of this disclosure statement describes the management plan for avoiding, neutralizing, or mitigating the potential organizational conflicts of interest as described in SECTION I of this disclosure statement. I acknowledge that WSDOT may require revisions to the management plan described in SECTION II of this disclosure statement prior to approving it, and that WSDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential organizational conflicts of interest described in SECTION I of this disclosure statement.

SECTION Ia – Name of Person or Firm Potentially Conflicted

SECTION Ib – Current Project Name and Scope of Work

SECTION Ic – Future Project Name and Description of Potential Conflicts of Interest

SECTION II - Plan for Managing Potential Conflicts of Interest

Signed: _____ Date: _____

Name: _____ Title: _____

FORM S

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION

To be signed by authorized Proposer representative

Name of Proposer: _____

My signature below certifies that, prior to submitting this Proposal, I have conducted an internal review of Proposer's current affiliations and have required Proposer's team members to identify potential, real, or perceived organizational conflicts of interest relative to the anticipated procurement, in accordance with the WSDOT Secretary's Executive Order E 1059.00 and the WSDOT *Organizational Conflicts of Interest Manual*.

I further certify that Form(s) R (*Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan*) is/are provided, as listed below, for all real or potential organizational conflicts of interest as defined in the WSDOT *Organizational Conflicts of Interest Manual* for all Proposer's team members.

Signed _____ Date _____

Name _____ Title _____

List Attachments by name of Person(s) or firm(s) potentially conflicted:
